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BOARD OF DIRECTORS
MEETING MATERIALS

FEBRUARY 25, 2014

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NOTICE OF MEETING
OF
THE BOARD OF DIRECTORS

In accordance with the Bylaws of CIFC Corp., a Delaware corporation ("CIFC"), notice is hereby given of a meeting of the CIFC Board of Directors:

DATE: Tuesday, February 25, 2014

TIME: 9:00 a.m. – 12:00 p.m. EST

LOCATION: CIFC Corp.
250 Park Avenue
4th Floor
New York, NY 10017

DIAL IN: (866) 962-6634 (United States)
81080021891044 (Russia)
Access Code: 94724591 then #

CIFC CORP.
BOARD OF DIRECTORS MEETING
Tuesday, February 25, 2014

ACTION ITEMS

1. Minutes of Prior Meeting.

   Discuss and consider the minutes of the January 28, 2014 Board meeting. **See Exhibit 1.**

2. Revised 2014 Budget.

   Discuss and consider the revised 2014 Budget. **See Exhibits 2(a), (b) and (c).**

3. BDC Seed Capital Request.

   Discuss and consider a CIFC seed capital investment in a business development company. **See Exhibit 3.**

4. Declaration of Dividend.

   Discuss and consider a dividend of $0.10 per share of CIFC Corp. with respect to all of its outstanding shares of common stock. **See Exhibit 4.**

5. CIFC Asset Management LLC 401(k) Plan.

   Discuss and consider the CIFC Asset Management LLC 401(k) Plan. **See Exhibit 5.**

6. Investor Relations / Public Relations.

   Discuss CIFC's investor relations and public relations matters**.** (No Exhibit)

7. Termination of GE Shareholder Agreement.

   Discuss and consider a delegation to management to terminate the GE shareholder agreement. **See Exhibit 7.**

8. Year End and Annual Meeting Related Matters

   Discuss and consider annual meeting related matters, including filing CIFC's 10-K, director appointments for 2014-2015, Board Committee appointments, Director compensation and the 2014 CIFC annual meeting. (No Exhibit)

EXECUTIVE SESSION

9. Executive Session.

EXHIBITS

1. Draft minutes of the January 28, 2014 Board meeting.
2. Budget & Related Exhibits.
    a. Memo re Revisions to 2014 Budget
    b. Revised 2014 Budget
    c. Draft resolutions re adoption of 2014 Budget.
3. BDC Presentation (To be Provided Separately)
4. Draft resolutions re Dividend
5. 401(k) Plan.
    a. Overview of 401(k) plan.
    b. 401(k) plan agreement
    c. Draft resolutions re 401(k) plan.
6. Intentionally omitted.
7. Draft resolutions re termination of GE shareholders agreement.

Exhibit 1

CIFC CORP.

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

January 28, 2014

A duly called meeting of the Board of Directors (the "Board") of CIFC Corp. (the "Company") was held on January 28, 2014, starting at approximately 11:00 a.m. EST, at the offices of Columbus Nova at 900 Third Avenue, 19th Floor, New York, New York, notice having been properly given pursuant to the Company's By-laws. Attending the meeting were:

Directors — Robert Machinist (Chairman), Frederick Arnold, Iosif Bakaleynik, Jason Epstein, Peter Gleysteen, Andy Intrater, Paul Lipari, Robert Machinist and Frank Puleo.

Officers — Rob Milton (General Counsel and Secretary), Rahul Agarwal (Chief Financial Officer), Stephen J. Vaccaro (Chief Investment Officer), and Oliver Wriedt (Head of Capital Markets & Distribution)

Other Attendees — Ehud Barak and Marco Musetti.

Mr. Milton circulated to each Board member prior to the meeting a notice of meeting, agenda and written meeting materials.

1. Welcome

Mr. Machinist called the meeting to order and asked Mr. Milton to serve as secretary of the meeting.

2. Approval of Minutes

Upon motion made and seconded, the Board approved the minutes of its meetings of December 10, 2013 and December 19, 2013.

3. Director Appointments

Messrs. Barak and Musetti left the meeting and the Board discussed the election of Messrs. Barak and Musetti as members of the Board. Following discussion and upon motion made and seconded, the Board unanimously took the following action:

WHEREAS, pursuant to the Third Amended and Restated Stockholders Agreement, dated as of December 2, 2013, between the Company and DFR Holdings, LLC ("DFR Holdings"), DFR Holdings designates Ehud Barak and Marco Musetti to serve as Directors of the Company; and

WHEREAS, the Board hereby appoints Ehud Barak and Marco Musetti to serve as Directors of the Company; and

WHEREAS, in connection with the appointment of Messrs. Barak and Musetti to the Board and as an inducement for their service, the Board has determined that it is advisable for the Company and Messrs. Barak and Musetti to enter into indemnification agreements, each in a form substantially similar to the Company's standard indemnification agreement with Directors (together, the "Indemnification Agreements").

NOW THEREFORE BE IT:

RESOLVED, the Board hereby unanimously appoints Messrs. Barak and Musetti, effective immediately, to serve as directors, to serve for a term expiring at the Company's next annual meeting of stockholders and until their successors are duly elected and qualified; and be it further

RESOLVED, that the Indemnification Agreements are hereby authorized, adopted and approved by the Board in all respects.

4. General Business Updates

CIFC's Chief Investment Officer provided, and discussed in detail with the Board, an update on the credit markets and funds and accounts managed by CIFC generally. CIFC's Head of Capital Markets & Distribution provided, and discussed in detail with the Board, an update on the Company's marketing outreach and efforts on product launches. The Board further discussed these matters in detail with Management.

5. Termination of Principal Investment Program

As provided in the Memorandum to the Board entitled "Termination of Principal Investment Program" included in the Board materials, Management recommended that the Company's Principal Investment Program be terminated. The Board discussed the termination and the management of CIFC's balance sheet investments in CLO equity. Following discussion and upon motion made and seconded, the Board unanimously took the following action:

RESOLVED, that the Company is authorized to terminate the Principal Investment Program; and it is further

RESOLVED, that the officers of the Company are, and each of them hereby is, authorized and directed, in the name and on behalf of the Company, to make or cause to be made, and to execute and deliver, all such additional agreements, documents, instruments and certifications, and to do or cause to be done all such acts and things, and to take all such steps, as any one or more of such officers may at any time or times deem necessary or desirable to terminate the Principal Investment Program and carry out the full intent and purposes of the foregoing resolution.

6. CLO Opportunities Fund

CIFC's Management Committee provided the Board with detail on the intended launch of the CIFC's CLO Opportunities Fund (the "CLO Opportunities Fund") and the commitment of Company capital thereto. The Board and Management discussed the fund in detail. Management also requested approval for a $10,000,000 seed investment in the CLO Opportunities Fund. Following discussion and upon motion duly made and seconded, the Board took the following action:

WHEREAS, the Board has determined that it is advisable to approve a $10,000,000 seed investment in the CLO Opportunities Fund (the "Seed Investment"):

NOW THEREFORE, BE IT:

RESOLVED, that the Board hereby approves the Seed Investment in the Credit Opportunities Fund; and be it further

RESOLVED, that the officers of the Company be, and each of them hereby is, authorized in the name of and on behalf of the Company to make all such arrangements, to take all such further action, to cause to be prepared and filed all such documents, to make all expenditures and incur all expenses and to execute and deliver all instruments and documents, including officers' certificates, as they may deem necessary or appropriate in order to fully effectuate the purposes of the foregoing resolution, and the execution by any such officer of any such document or instrument or the payment of any such expenditures or expenses or the performance by any officer of any act in connection with the foregoing matters shall conclusively establish his or her authority therefor from the Company and the approval and ratification by the Company of the documents or instruments so executed, the expenses or expenditures so paid and the action so taken; and be it further

RESOLVED, that any and all actions heretofore taken by any officer of the Company (and/or any subsidiary of the Company) in connection with the matters contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

7. Share Repurchase Program

The Board discussed in detail CIFC's existing share repurchase program. No changes to the program were made.

8. Financing Opportunities

The Board discussed in detail, with input from CIFC management, alternatives that may be available to the Company to finance its business ("Financing Options"). Upon motion made and seconded, the Board:

RESOLVED, that the Chairman of the Board, in consultation with Management, is authorized on behalf of the Company to engage a financial advisor to assist the Company

in considering Financing Options, such engagement to be on such terms and conditions as the Chairman deems necessary and appropriate, taking into account current market terms; and it is further

RESOLVED, that the officers of the Company are, and each of them hereby is, authorized and directed, in the name and on behalf of the Company, to make or cause to be made, and to execute and deliver, all such additional agreements, documents, instruments and certifications, and to do or cause to be done all such acts and things, and to take all such steps, as any one or more of such officers may at any time or times deem necessary or desirable to engage the financial advisor, at the direction of the Chairman, and carry out the full intent and purposes of the foregoing resolution.

9. CIFC Public Relations / Public Facing Function

The Board discussed in detail, with input from CIFC management, the Company's public relations efforts. Upon motion made and seconded, the Board:

RESOLVED, that the Chairman of the Board, in consultation with Management, is authorized on behalf of the Company to consider and implement a public relations strategy for the Company; and it is further

RESOLVED, that, at the direction of the Chairman, the officers of the Company are, and each of them hereby is, authorized and directed, in the name and on behalf of the Company, to make or cause to be made, and to execute and deliver, all such additional agreements, documents, instruments and certifications, and to do or cause to be done all such acts and things, and to take all such steps, as any one or more of such officers may at any time or times deem necessary or desirable to engage the financial advisor, at the direction of the Chairman, and carry out the full intent and purposes of the foregoing resolution.

10. 2014 Business Plan and Proposed Budget

CIFC's Management provided the CIFC 2014 Business Plan, dated January 28, 2014, and discussed in detail the business plan and the proposed budget for 2014 (such 2014 budget, the "2014 Budget"). The Board reviewed the 2014 Budget in detail and requested additional information and clarification of certain items. The Board deemed advisable to conditionally approve the 2014 Budget, substantially as presented at the meeting. Following discussion and upon motion duly made and seconded, the Board took the following action:

WHEREAS, the Board desires to approve the 2014 Budget, substantially as presented at the meeting, subject to the conditions described below;

NOW THEREFORE BE IT

RESOLVED, that the Board hereby approves and adopts in all respects the 2014 Budget in the form presented at the meeting, such that capital expenditures, new hires and other operating expenditures set forth in the 2014 Budget may be implemented and/or incurred to the extent advisable, in the discretion of the officers of the Company; provided, however, that the Board reserves the right to revisit and reconsider the 2014 Budget at future meetings of the Board; and be it further

RESOLVED, that the officers of the Company be, and each of them hereby is, authorized in the name of and on behalf of the Company to make all such arrangements, to take all such further action, to cause to be prepared and filed all such documents, to make all expenditures and incur all expenses and to execute and deliver all instruments and documents, including officers' certificates, as they may deem necessary or appropriate in order to fully effectuate the purposes of each and all of the foregoing resolution, and the execution by any such officer of any such document or instrument or the payment of any such expenditures or expenses or the performance by any officer of any act in connection with the foregoing matters shall conclusively establish his or her authority therefor from the Company and the approval and ratification by the Company of the documents or instruments so executed, the expenses or expenditures so paid and the action so taken; and be it further

RESOLVED, that any and all actions heretofore taken by any officer of the Company (and/or any subsidiary of the Company) in connection with the matters contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

11. Executive Session

Members of Management departed and the Board met in Executive Session.

12. Adjournment

There being no further matters before the Board, the meeting was adjourned at approximately 2:00 p.m. EST.

_____

Robert C. Milton III
Secretary of the Meeting

Exhibit 2a

CIFC Asset Management

To: Board of Directors

CC: CIFC Management Committee, Robert Milton

From: Rahul Agarwal

Re: Changes to 2014 Budget proposal

Date: February 20, 2014

The following memo highlights revisions to the 2014 Budget since the version that was presented at the January, 25 2014 Board Meeting.

Revenue: We plan to focus our efforts in 2014 to create a Business Development Company (BDC) with $30m of CIFC capital, with the intent to IPO it in 2015. This will be the third leg of our credit platform, in addition to CLOs and total return fund management. The Credit Opportunities Fund has been removed from the budget since it would compete with the BDC. In addition to cash, we propose to sell down $10M of CLO equity to fund the BDC. Accordingly, NII from CLO equity is reduced by $2.4M.

Expenses: There is a proposed spend of $1.0M to set up the BDC in 2014.

New Hires: In addition to the $1.6m proposed previously, we propose to spend $1.2m to hire 4 origination professionals for a total anticipated cost of $1.9M and support staff for $0.4M.

Compensation: Pending further discussion.

EBITDA: The impact of the above items is a reduction in 2014B EBITDA by $6.2m to $49.0m. The $6.2m is summarized below. **Please note that the EBITDA does not reflect any potential gains / losses from CLO equity. All distributions are booked as income.**

$ in 000s		
Revenue		
CDO/ABS and other	(611)	Removed non-core revenues from ABS/CDOs
1st Lien Loans (SSCL & SMAs)	(600)	Updated AUM assumptions
2nd Lien Loans (Tactical Income Fund)	(428)	Updated AUM assumptions
HV Credit Opportunities Fund	(750)	Replaced by BDC
CLO Opportunities Fund	(975)	Updated AUM assumptions
BDC Fund	(988)	Updated AUM assumptions
Subtotal	(4,351)	
Net investment income		
CLO Equity Investments	(2,376)	Sale of $10M CLO Equity
Fund Investments	2,596	$30M (vs. $10M) investment in BDC $2.9M, offset by removal of Credit Opps ($375K), SSCLF ($350K)
Subtotal	220	
BDC Setup Expense	(1,000)	
BDC New Hires	(1,158)	
Total	(6,288)	

Attached is a bridge from the Jan '14 presentation to the proposed 2014 Budget.

CIFC Corp.

Proposed 2014 Budget

($ in thousands)

	January Budget	Adjustments	Proposed Budget	Budget Notes
Revenues				
Senior Management Fees	$ 20,395	$ (611)	$ 19,784	Excluded revenue from non-core AUM related to CDO/ABS.
Subordinated Management Fees	29,611	-	29,611	
Incentive Fees	14,972	-	14,972	
Fee from Other Loan-based Products	10,245	(3,741)	6,504	Updated AUM forecasts for 1st Lien $(600)K, 2nd Lien loan funds $(428)K, and CLO Opportunities Fund $(975)K. Removed Credit Opportunities $(750)K and revised fee structure for BDC Fund $(988)K.
Total Advisory Fee Revenues	75,223	(4,351)	70,872	
Net Investment and Interest Income	22,880	220	23,100	Additional $20M CIFC investment in BDC and $50M in pre-BDC "Warehouse" $2.9M, offset by removal of Credit Opps ($375K), SSCLF ($350K), and sale of $10M in CLO Equity.
Total Revenues	**98,103**	**(4,131)**	**93,972**	
Expenses				
Insurance	2,119	-	2,119	
Occupancy	1,650	-	1,650	
Professional Services	4,045	-	4,045	
Subscriptions - Investment Management	1,833	-	1,833	
Technology	1,229	-	1,229	
T&E	680	-	680	
Other general & administrative expenses	1,499	-	1,499	
Organization Cost of BDC	-	1,000	1,000	Added incremental cost of setting up a BDC.
Total G&A	13,055	1,000	14,055	
Base & Bonus - Current Employees	22,186	-	22,186	
Base & Bonus - Proposed New Hires	1,985	1,158	3,143	Reflects revised new hires for BDC.
Vice Chairman	950	-	950	
Benefits	2,000	-	2,000	
Benefits - 401-K Match	500	-	500	
Compensation - Prior Year Amortization	2,135	-	2,135	
Total Cash Compensation and Benefits	29,756	1,158	30,914	
Total Expense	**42,811**	**2,158**	**44,969**	
Realized/Unrealized G/L on CLO Equity				
Realized Gain/Loss	-	-	-	
Unrealized Gain/Loss	-	-	-	
ENI EBITDA	**55,292**	**(6,289)**	**49,003**	
ENI EBITDA Margin	*56%*		*52%*	
ENI EBITDA Margin excluding NII	*43%*		*37%*	

CIFC Asset Management

Exhibit 2b

CIFC 2014 Business Plan

February 20, 2014

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CIFC Asset Management

Section I: 2014 Proposals

2014 Strategic Initiatives

- **Continue to expand our Credit Platform across two existing business lines**
  - New Issue CLO: $2.5B of BSL CLOs
  - Total Return: New AUM for non-CLO products of $2.2B
  - Reach agreement on terms of strategic relationship with HarbourVest.
- **Focus efforts to raise a private Business Development Company (BDC) with CIFC Capital of $30M**
  - High margin business line in an established market
- **Began mix shift between Senior and Junior Analysts**
- **Focus on tax efficiency:**
  - Evaluate various tax planning initiatives
  - Explore raising more tax efficient capital
- **Continue to actively manage risk and generate NII using $50M of Warehouse capacity**

2014 Proposals

- Build the private markets platform for the BDC
  - Invest $30M in a pre-BDC “warehouse” facility with 1-2 turns of leverage
  - Hire 4 origination professionals for a total anticipated cost of $1.9M and support staff for $0.4M.
- Invest $10M to seed the CLO Opportunities Fund to invest primarily in non-CIFC CLO debt and equity - Approved by the Board on January 25, 2014.
- 401K match of 25% up to 8% of compensation *(plus profit participation)*
  - 3 year vesting period from date of hire
  - Total cash outlay is approx. $500K (can vary based on employee contribution)
  - 2014 EBITDA impact of $350K - $400K
- Replace aging hardware & upgrade technology function $1.7M (see Appendix A).
  - This compares to $2.2M approved for 2013 of which $1.0M was spent and $0.4M is carried forward to 2014
  - Build the Technology and Compliance functions by adding 1 mid-senior level person in each function for $0.1M
- Provide Bloomberg terminals to all investment professionals for an incremental cost of $273K.

Proposed New Hires for 2014

Compensation for 2014		
Existing Full Time Staff		**20,796,500**
Target Increase for 2014	5%	1,039,825
Part Time / Interns		**350,000**
Inv. Mgmt. Interns	120,000	
Finance, Operations, Legal	50,000	
Part-Time - Tax / Admin	180,000	
Current Employees		**22,186,325**
Proposed New Hires		
Full-Time		**3,142,500**
2014 Proposed Compensation	**$**	**25,328,825**

Headcount	Dec. 31, 2013	Dec. 31, 2014E
Full Time	75	87
Part Time	2	2
Interns	3	3
Total	**80**	**92**

			Run Rate				2014	
	Breakout of Proposed New Hires	**Department**	**Base**	**Bonus**	**Compensation**	**Timing**	**Expense**	**Comments**
1	Compliance VP	Legal IA & HR	175,000	50,000	225,000	Q1	225,000	Hired Lisa Harris
2	Marketing VP	Capital Markets	150,000	50,000	200,000	Q1	200,000	Hired Michael Carroll*
3	Private Markets Managing Director	Capital Markets	300,000	200,000	500,000	Q1	500,000	Hired Peter McLaughlin*
4	Private Markets Managing Director	Capital Markets	300,000	300,000	600,000	Q1	600,000	(1)
5	Private Markets VP	Capital Markets	200,000	200,000	400,000	Q1	400,000	(2)
6	Private Markets VP	Capital Markets	200,000	200,000	400,000	Q1	400,000	(1)
7	Investment Analyst	Investment Management	100,000	100,000	200,000	Q1	200,000	
8	Junior Portfolio Manager	Investment Management	100,000	100,000	200,000	Q1	200,000	
9	VP of Infrastructure	IT	175,000	50,000	225,000	Q1	225,000	
10	Fund Accountant	Finance	75,000	10,000	85,000	Q1	85,000	
11	Finance (BDC)	Finance	225,000	100,000	325,000	Q4	81,250	(1)
12	Operations Analyst (BDC)	Operations	85,000	20,000	105,000	Q4	26,250	(1)
	Total Proposed New Hires		**$ 2,085,000**	**$ 1,380,000**	**$ 3,465,000**		**$ 3,142,500**	

* Bonus not guaranteed

(1) Additional hires proposed since January budget proposal

(2) Adjusted proposed compensation since January budget proposal from $250K to $400K

Section II: 2014 Budget

2014 Revenue Detail

($ In thousands)

	2013A	Forecast 2014B	2015F	2016F	CAGR '13A - '16
Revenues					
Senior Management Fees	$ 19,998	$ 19,784	$ 18,909	$ 18,154	
Subordinated Management Fees	33,861	29,611	29,040	28,752	
Incentive Fees	16,272	14,972	11,875	24,210	
Fee from Other Loan-based Products	1,703	6,504	30,694	66,681	
Management Fees	71,834	70,872	90,517	137,797	24%
Net Interest Income	22,345	23,100	26,394	25,194	4%
Total Revenues	**94,179**	**93,972**	**116,911**	**162,991**	**20%**
Expenses					
Insurance [1]	1,942	2,119			
Occupancy	1,625	1,650			
Professional Services	4,830	4,045			
Subscriptions - Investment Management	1,313	1,833			
Technology	592	1,229			
T&E	580	680			
Other general & administrative expenses	1,573	1,499			
Change of Control expenses	529	-			
Organization Cost of BDC	-	1,000			
Total G&A	12,984	14,055	13,708	14,393	3%
Base & Bonus - Current Employees [2]	19,781	22,186	26,934	30,381	
Base & Bonus - Proposed New Hires		3,143	2,000	2,000	
Vice Chairman	-	950	950	850	
Benefits	1,832	2,000	2,100	2,205	
Benefits - 401-K Match		500	525	551	
Compensation - Prior Year Amortization	4,958	2,135	2,010	856	
Total Compensation and Benefits	26,572	30,914	34,519	36,843	12%
Total Expense	**39,556**	**44,969**	**48,227**	**51,236**	**9%**
Realized/Unrealized G/L on CLO Equity					
Realized G/L on CLO Equity	4,460	-	-	-	
Unrealized G/L on CLO Equity	(10,561)	-	-	-	
Total Realized/Unrealized G/L on CLO Equity	(6,102)	-	-	-	
ENI EBITDA (3)	$ 48,521	$ 49,003	$ 68,684	$ 111,755	32%
EBITDA margin	*52%*	*52%*	*59%*	*69%*	
Depreciation and amortization	736	1,000			
Corporate interest expense (cash-basis)	4,344	4,674			
Corporate interest expense (amortization)	1,521	1,597			
ENI	$ 41,921	$ 41,732	$ 68,684	$ 111,755	39%
ENI margin	*45%*	*44%*	*59%*	*69%*	
ABS/CDO and Other Revenue (Non-core)	*3,139*	*611*	*480*	*372*	-51%
EBITDA Incl. Non-core Revenue	51,660	49,614	69,165	112,126	29%
EBITDA Incl. Non-core Revenue Margin	*53%*	*52%*	*59%*	*69%*	

	2013A	Forecast 2014B	2015F	2016F
I. CLO and Loan-Based Product Advisory Fees (Net of fee sharing)				
Legacy Deals: Management Fees	$ 39,059	$ 27,603	$ 17,611	$ 7,202
Legacy Deals: Incentive Fees	16,259	14,972	11,875	24,210
4 Navigator CLOs	2,660	1,253	621	261
BSL CLOs 2011 - 2013 Management Fees	12,153	18,218	18,221	17,477
BSL CLOs 2014 - 2016 Management Fees	-	2,322	11,497	21,966
Subtotal CLO Management Fees	$ 70,130	$ 64,367	$ 59,824	$ 71,116
Fee from Other Loan-based Products (II)	1,703	6,504	30,694	66,681
Total Advisory Fees	**$ 71,834**	**$ 70,872**	**$ 90,517**	**$ 137,797**
II. Management Fee from Other Loan-based Products				
1. Corporate Credit Funds				
1st Lien Loans (SSCLF & SMAs)	$ 617	$ 2,859	$ 6,209	$ 11,659
2nd Lien Loans (Tactical Income Fund)	-	857	5,114	9,364
2. GE Initiatives				
Special Servicing	1,085	1,283	1,658	1,845
3. Opportunities Funds				
CLO Co-Investment Fund	2	281	413	413
CLO Opportunities Fund	-	975	3,900	7,800
CLO Control Equity Fund	-	-	1,000	2,500
Distressed Fund	-	-	-	1,250
4. Permanent Capital Vehicles				
BDC Fund	-	249	11,900	29,850
Closed End Fund	-	-	500	2,000
Total New Loan Product Advisory Fees	**$ 1,703**	**$ 6,504**	**$ 30,694**	**$ 66,681**
III. Net Investment and Interest Income				
Warehouse BSL CLOs	$ 9,388	$ 5,000	$ 5,000	$ 5,000
CLO Equity Investments	11,657	9,504	9,319	6,619
Fund Investments	1,300	8,596	12,075	13,575
Total Net Investment and Interest Income	**$ 22,345**	**$ 23,100**	**$ 26,394**	**$ 25,194**

Notes:

(1) Insurance includes non-cash run-off policies of $394K.

(2) Includes 5% inflation on 2014 plus proposed new hires from the previous period.

(3) ENI EBITDA 2014 onwards excludes realized/unrealized gain (loss) on CLO equity. All distributions are booked as income.

CIFC Asset Management

2014 Budget Compared to 2013 Actual

	2013A	Forecast 2014B	2015F	2016F	2014B vs. 2013A (%)	Comments
Revenues						
Senior Management Fees	$ 19,998	$ 19,784	$ 18,909	$ 18,154	-1.1%	
Subordinated Management Fees	33,861	29,611	29,040	28,752	-12.6%	
Incentive Fees	16,272	14,972	11,875	24,210	-8.0%	
Fee from Other Loan-based Products	1,703	6,504	30,694	66,681	281.9%	
Management Fees	71,834	70,872	90,517	137,797	-1.3%	
Net Interest Income	22,345	23,100	26,394	25,194	3.4%	
Total Revenues	**94,179**	**93,972**	**116,911**	**162,991**	**-0.2%**	See next page for details on Revenue
Expenses						
Insurance [1]	1,942	2,119			9.1%	Increase due to increase in premium on renewal plus $75K of P&C (2013 paid in 2012)
Occupancy	1,625	1,650			1.5%	2013 Budget did not account for utilities, maintenance, and commercial rent tax
Professional Services	4,830	4,045			-16.3%	Reduction in 2014B driven by audit fee ($300K), Greensledge ($100K), Brunswick ($50K), recruiting fee ($200K), tax ($100K), Northpoint ($100K), Nextstep ($100K), partially offset by $300K reversal of 2012 legal accrual in 2013. 2013 includes litigation expense of $250K.
Subscriptions - Investment Management	1,313	1,833			39.6%	Increase due to full year of Kanerai & Bloomberg Terminals for Investment team
Technology	592	1,229			107.6%	New Capex related EBITDA $250K, new services $170K, $100K disaster recovery (2013), and $100K of increase in existing services.
T&E	580	680			17.3%	Increase in T&E due to foreign board member and larger marketing team.
Other general & administrative expenses	1,573	1,499			-4.7%	
Change of Control expenses	529	-				
Organization Cost of BDC	-	1,000				
Total G&A	12,984	14,055	13,708	14,393	8.2%	
Base & Bonus - Current Employees [2]	19,781	22,186	26,934	30,381	12.2%	5% increase proposed of $1.0M, $0.7M run rate adjustment for new CMD hires in 2013, $0.2M for HR hire, and $0.3M for new hires in Finance/Operations/ IT.
Base & Bonus - Proposed New Hires		3,143	2,000	2,000		See page on Proposed New Hires
Vice Chairman	-	950	950	850		
Benefits	1,832	2,000	2,100	2,205	9.2%	
Benefits - 401-K Match		500	525	551		Increase due to $500K proposed for 401K match and profit participation
Compensation - Prior Year Amortization	4,958	2,135	2,010	856		Increase of $1.8M in 2013 due to accelerated vesting of stock options for CEO.
Total Compensation and Benefits	26,572	30,914	34,519	36,843	16.3%	
Total Expense	**39,556**	**44,969**	**48,227**	**51,236**	**13.7%**	
Realized/Unrealized G/L on CLO Equity						
Realized G/L on CLO Equity	4,460	-	-	-		
Unrealized G/L on CLO Equity	(10,561)	-	-	-		
Total Realized/Unrealized G/L on CLO Equity	(6,102)	-	-	-		
ENI EBITDA (3)	$ 48,521	$ 49,003	$ 68,684	$ 111,755	1.0%	
EBITDA margin	*52%*	*52%*	*59%*	*69%*		
Depreciation and amortization	736	1,000				
Corporate interest expense (cash-basis)	4,344	4,674				
Corporate interest expense (amortization)	1,521	1,597				
ENI	$ 41,921	$ 41,732	$ 68,684	$ 111,755	-0.5%	
ENI margin	*45%*	*44%*	*59%*	*69%*		

CIFC Asset Management

Investment & NII Details

CIFC Corp Principal Investments	Investment			$ Returns					
	Notional/Par	Implied Price	FMV @ 12/31	2013B	Over / (Under)	2013A	2014B	2015F	2016F
BSL Warehouse Returns	**30,000,000**		**32,529,133**	**1,750,000**	**7,638,081**	**9,388,081**	**5,000,000**	**5,000,000**	**5,000,000**
Committed CLO Equity									
CLO 2006-1	6,525,000	41.33%	2,696,740	$ -	$ -	$ -	$ 698,901	$ 2,371,199	$ -
CLO 2006-1B	3,900,000	44.18%	1,723,061	-	162,229	162,229	440,879	1,652,523	-
CIFC 2006-II	5,300,000	52.78%	2,797,329	1,348,076	76,600	1,424,676	698,099	404,322	2,148,285
CLO 2007-I	3,715,575	65.19%	2,422,290	-	-	-	789,861	416,061	1,808,853
CLO 2007-II	5,000,000	73.83%	3,691,620	-	-	-	1,388,085	828,994	422,163
CLO 2007-III	3,675,000	68.31%	2,510,246	-	-	-	965,729	575,304	234,667
CLO 2011-1	1,691,500	74.00%	1,251,761	$ 946,635	$ (80,973)	$ 865,662	$ 358,245	$ 254,048	$ 66,490
CLO 2012-1	5,000,000	81.76%	4,088,189	1,199,834	177,689	1,377,523	998,214	760,146	591,793
CLO 2012-2	5,000,000	89.71%	4,485,402	1,029,088	(86,474)	942,614	1,058,694	832,507	652,942
CLO 2012-3	-	N/A	-	750,248	329,101	1,079,349	-	-	-
CLO 2013-1	2,000,000	106.36%	2,127,130	71,250	383,650	454,900	537,753	445,577	347,698
CLO 2013-2	4,000,000	110.85%	4,433,860	47,500	(47,500)	-	1,256,569	953,279	748,915
CLO 2013-3	4,900,000	92.89%	4,551,768	-	125,000	125,000	700,954	662,489	495,673
Discretionary Investments									
CLO 2011-1	5,138,500	74.00%	3,802,644	4,554,649	(1,924,910)	2,629,739	1,088,290	771,755	201,985
CLO 2012-3	2,860,000	90.34%	2,583,847	-	529,810	529,810	586,014	482,078	367,488
CLO 2013-2	1,000,000	110.85%	1,108,465	-	-	-	314,142	238,320	187,229
CIFC CLO 2007-II BBB Notes	-	N/A	-	-	15,185	15,185	-	-	-
Bridgeport I Subordinated Notes	-	N/A	-	1,348,076	194,913	1,542,989	-	-	-
Market Square 45% Beneficial Interest in Sut	10,800,000	0.17%	18,000	497,739	-	497,739	-	-	-
Other	-	0.00%	-	-	9,751	9,751	-	-	-
Sale of CLO Equity			(10,000,000)	-	-	-	(2,376,086)	(2,329,720)	(1,654,836)
Total CLO Investments & Other	**70,505,575**		**44,292,350**	**11,793,095**	**(135,929)**	**11,657,166**	**9,504,344**	**9,318,880**	**6,619,344**
Fund Investments									
Senior Secured Corporate Loans Fund - I	5,000,000	N/A	5,164,911	-	164,911	164,911	350,000	350,000	350,000
Senior Secured Corporate Loans Fund - II	5,000,000	N/A	5,662,057	350,000	254,191	604,191	87,500	-	-
Credit Opportunities Fund	-	-	-	1,415,000	(1,415,000)	-	-	-	-
CLO Opportunities Fund	-	-	-	762,500	(762,500)	-	900,000	1,200,000	1,200,000
CLO Co-invest Fund	15,000,000	N/A	15,326,248	-	326,248	326,248	2,475,000	2,475,000	2,475,000
CLO Control Equity Fund	-	-	-	-	-	-	-	750,000	1,500,000
Distressed Fund	-	-	-	-	-	-	-	-	750,000
Tactical Income Fund	10,000,000	N/A	10,155,876	-	204,614	204,614	1,200,000	1,200,000	1,200,000
BDC Fund	-	-	-	-	-	-	3,583,333	6,100,000	6,100,000
Total Fund Investments	**35,000,000**		**36,309,092**	**2,527,500**	**(1,227,536)**	**1,299,964**	**8,595,833**	**12,075,000**	**13,575,000**
Total	**$ 135,505,575**		**$ 113,130,575**	**$ 16,070,595**	**$ 6,274,616**	**$ 22,345,210**	**$ 23,100,177**	**$ 26,393,880**	**$ 25,194,344**

New AUM Projection

($ in millions) (Balances as of year end)	2012	Break-out of new AUM raise by year 2013 A	2014 E	2015 E	2016 E	Cumulative 2014-2016
New CLOs						
Broadly Syndicated CLOs [1]	$ 2,096	$ 2,035	$ 2,500	$ 2,500	$ 2,500	$ 7,500
New Product Initiatives						
1. Corporate Credit Funds						
1st Lien Loans (SSCLF & SMAs)[2]	51	351	500	1,000	1,500	3,000
2nd Lien Loans (Tactical Income Fund)	-	-	200	200	300	700
Total Corporate Credit Funds	**51**	**351**	**700**	**1,200**	**1,800**	**3,700**
2. GE Initiatives						
Special Servicing	465	235	250	250	-	500
Total GE Initiatives	**465**	**235**	**250**	**250**	**-**	**500**
3. Opportunities Funds						
CLO Co-Invest Fund	-	5	80	-	-	80
CLO Control Equity Fund	-	-	-	200	100	300
CLO Opportunity Fund	-	-	100	200	200	500
Distressed Fund	-	-	-	-	250	250
Total Opportunities Funds	**-**	**5**	**180**	**400**	**550**	**1,130**
4. Permanent Capital Vehicles						
BDC Fund	-	-	100	400	500	1,000
Closed End Fund	-	-	-	100	200	300
Total Permanent Capital Vehicles	**-**	**-**	**100**	**500**	**700**	**1,300**
Total New Loan Product Initiatives	**516**	**591**	**1,230**	**2,350**	**3,050**	**6,630**
Grand Total AUM Per Annum Raise	**$ 2,611**	**$ 2,626**	**$ 3,730**	**$ 4,850**	**$ 5,550**	**$ 14,130**
AUM raised in 2012-2013						5,237
Post-2013 New AUM						**$ 19,367**

CIFC Asset Management

New AUM Assumptions

CIFC Fund Initiative	Net investment & Interest Income	CIFC Fee Structure		
		Management Fee	Incentive / Hurdle / Catch-Up / Assumed Gross Return	Run-Rate Margin
New CLOs			**Incentive fee**	
Broadly Syndicated CLOs (closing at each quarter end)	7.5% in year 1 on a 6 month delay after closing	45 bps Total	20% / 12% / 0% / 15%	105 bps
	15% thereafter	13.5 bps senior + 31.5 bps sub (6-month delay) through 2013-3		
		20.0 bps senior + 25 bps sub (6-month delay) for 2013-4		
Warehouses				
Warehouse (BSL CLOs)	10% evenly throughout the year			
Corporate Credit Funds			**Incentive Fee**	
Senior Secured Corporate Loan Fund	7% gross per annum on $5M seed	50 bps	N/A	50 bps
Tactical Income Fund	12% gross per annum on seed	50 bps	10% / 8% / 100% / 12%	170 bps
Separately Managed Accounts				
Mercury ($40M levered 3x)	N/A	25 bps on $160M	10% / - / NA / 12% on $160M	60 bps on $160M
Local #338	N/A	30 bps	N/A	30 bps
Other SMA	N/A	40 bps	N/A	40 bps
GE Initiatives			**Incentive Fee**	
Special Servicing (example: "Buckeye")	N/A	15 bps	N/A	15 bps
Opportunities Funds			**Carried Interest after Year 5**	
HV Credit Opportunities Fund	15% gross per annum	60% of 100 bps	60% of 10% / 8% / 100% / 15%	150 bps
CLO Co-Investment Fund	16.5% gross per annum	48.5 bps blended (25 bps on $5M; 50 bps on $80M)	10% / 15% / 100% / 16.5%	213.5 bps blended
CLO Opportunities Fund	12% gross per annum	75 bps	10% / 8% / 12%	195 bps
CLO Control Equity Fund	15% gross per annum	100 bps	5% / NA / 15%	175 bps
Distressed Fund	15% gross per annum	100 bps	15% / 8%/ 100% / 15%	325 bps
Permanent Capital Vehicles			**Incentive Fee**	
BDC Funds	10% gross per annum in 2014, 12% thereafter First $100M	100 bps	15% / 8% / 100% / 10%	250 bps
	13% gross per annum w/ .5x leverage	187.5 bps levered	20% / 8% / 100% / 13%	447.5 bps
Closed End Funds	N/A	100 bps	N/A	100 bps

CIFC Asset Management

Cumulative AUM Projections

Balances are as of year end	2011	2012 Run-Off	2012	2013 Run-Off *	2013	2014 Run-Off	2014	2015 Run-Off	2015	2016 Run-Off	2016
Legacy AUM and Run Off											
Legacy CLO Deals	$ 10,318	$ (1,869)	$ 8,450	$ (2,011)	$ 6,438	$ (2,254)	$ 4,185	$ (2,078)	$ 2,107	$ (1,455)	$ 652
4 Navigator CLOs	-	1,149	1,149	(776)	373	(220)	153	(71)	81	(81)	-
Total Legacy AUM and Run Off	10,318	(719)	9,599	(2,788)	6,811	(2,474)	4,338	(2,149)	2,188	(1,536)	652
Other (CypressTree/Whitebark)	74		10	(10)							
Cumulative New AUM:											
BSL CLO			2,096		4,128		6,628		9,128		11,628
Middle Market CLO			-		-		-		-		-
Post-2011 CLO AUM			2,096		4,128		6,628		9,128		11,628
New Loan Product Initiatives			516		1,107		2,337		4,687		7,737
Total New Post-2011 AUM			2,611		5,234		8,964		13,814		19,367
Post-2011 CLO Cumulative AUM Run-off				-		-		(129)		(275)	
Cumulative Post-2011 AUM			2,611		5,234		8,964		13,686		19,093
Total Loan Based AUM	**$ 10,392**		**$ 12,221**		**$ 12,046**		**$ 13,302**		**$ 15,874**		**$ 19,745**

	2011	%	2012	%	2013	%	2014	%	2015	%	2016	%
AUM by Product Type												
Legacy CLOs	10,318	99%	9,599	79%	6,811	57%	4,338	33%	2,188	14%	652	3%
Broadly Syndicated CLOs	-	0%	2,096	17%	4,128	34%	6,628	50%	8,999	57%	11,353	58%
Permanent Capital Vehicles	-	0%	-	0%	-	0%	100	1%	600	4%	1,300	7%
Opportunities Fund	-	0%	-	0%	5	0%	185	1%	585	4%	1,135	6%
Credit Funds	-	0%	51	0%	402	3%	1,102	8%	2,302	15%	4,102	21%
Special Servicing	-	0%	465	4%	700	6%	950	7%	1,200	8%	1,200	6%
Other (CypressTree/Whitebark)	74	1%	10	0%	-	0%	-	0%	-	0%	-	0%
Total Loan-Based AUM	**$ 10,392**	**100%**	**$ 12,221**	**100%**	**$ 12,046**	**100%**	**$ 13,302**	**100%**	**$ 15,874**	**100%**	**$ 19,742**	**100%**
ABS / IG CDOs	3,203		2,469		803		500		-		-	
Total AUM	**$ 13,595**		**$ 14,690**		**$ 12,849**		**$ 13,802**		**$ 15,874**		**$ 19,742**	

* 2013 Projected run-off revised from budget of $2.8B to $3.1B due to increased refinancing activity. Run-off for 2014-2015 relatively unchanged.

CIFC Asset Management

2014 Run Rate Revenue Target

($ in thousands)

New Deals	New AUM Budget	Gross Margin Budget (bps)	Revenue Target (Run-Rate) Budget
2013 New Issue BSL & MM CLOs:			
CIFC CLO 2014	$ 500,000	45	$ 2,250
CIFC CLO 2014-2	500,000	45	2,250
CIFC CLO 2014-3	500,000	45	2,250
CIFC CLO 2014-4	500,000	45	2,250
CIFC CLO 2014-5	500,000	45	2,250
Total	**2,500,000**		**11,250**
Other Loan-based Products:			
1. Corporate Credit Funds			
1st Lien Loans (SSCLF and SMAs)	500,000	45	2,250
2nd Lien Loans (Tactical Income Fund)	200,000	170	3,400
Special Servicing	250,000	15	375
CLO Co-Investment Fund (1)	80,000	50	400
CLO Opportunity Fund	100,000	195	1,950
2. Permanent Capital Vehicles			
BDC	100,000	250	2,500
Total	**1,230,000**		**10,875**
Total	**$ 3,730,000**		**$ 22,125**

(1) In addition to the base 50 bps fee, there is a performance allocation of 10% in excess of a net 15% return.

CIFC Asset Management

Cash Flow Projections

($ in Actual)	January	February	March	April	May	June	3Q 2014	4Q 2014	Total 2014
Beginning Cash	**21,365,302**	**23,548,821**	**22,677,402**	**14,296,217**	**37,142,943**	**34,171,364**	**30,147,180**	**36,708,437**	**21,365,302**
Total Advisory Fees and NII	**14,305,924**	**4,614,755**	**7,093,479**	**12,168,785**	**4,514,596**	**6,663,500**	**23,307,386**	**24,691,833**	**97,360,258**
Operating outflows									
Merger Payment- Columbus Nova	-	-	-	-	-	-	-	(1,179,000)	(1,179,000)
Due from Broker	13,828,084	-	-	-	-	-	-	-	13,828,084
Due to Broker	(1,122,207)	-	-	-	-	-	-	-	(1,122,207)
Compensation (Base & Benefits only)	(1,560,836)	(1,207,616)	(1,207,616)	(1,207,616)	(1,207,616)	(1,207,616)	(3,622,847)	(3,622,847)	(14,844,608)
Compensation - Bonus (Prior Year)	(7,909,455)	-	-	-	-	-	-	-	(7,909,455)
G&A Expense (EBITDA basis)	(2,019,391)	(1,078,559)	(1,078,559)	(1,078,559)	(1,078,559)	(1,078,559)	(3,235,677)	(3,235,677)	(13,883,539)
Capex	-	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(500,000)	(500,000)	(2,000,000)
Insurance Premium	-	-	-	-	-	-	-	(1,725,000)	(1,725,000)
Taxes	-	-	(1,500,000)	-	-	(6,110,862)	(6,110,862)	(6,110,862)	(19,832,586)
Total Operating outflows	**1,216,196**	**(2,486,175)**	**(3,986,175)**	**(2,486,175)**	**(2,486,175)**	**(8,597,036)**	**(13,469,386)**	**(16,373,386)**	**(48,668,310)**
Investing In/Outflows									
CLO Equity									
(Purchase) / Sales - SSCLF	-	-	-	5,164,911	-	-	-	-	5,164,911
(Purchase) / Sales - Discretionary	-	-	5,000,000	5,000,000	-	-	-	-	10,000,000
Loan Funds									
CLO Opportunity Fund - Seed Capital	-	-	(10,000,000)	-	-	-	-	-	(10,000,000)
BDC Fund - Seed Capital	-	-	(15,000,000)	(10,000,000)	(5,000,000)	-	-	-	(30,000,000)
CLO Control Equity Fund - Seed Capital	-	-	-	-	-	-	-	-	-
Distressed Fund - Seed Capital	-	-	-	-	-	-	-	-	-
Warehousing Activity									
2014 W/H Investments	(2,857,143)	-	7,857,143	-	-	-	-	-	5,000,000
2014-II W/H Investments	(10,000,000)	20,000,000	-	15,000,000	-	-	-	-	25,000,000
W/H Gain and Carried Interest	-	2,000,000	654,368	1,293,578	-	-	-	-	3,947,946
2014-III BNP W/H Investment	-	(15,000,000)	-	-	-	-	-	-	(15,000,000)
2014-V Citi W/H Investment	-	(10,000,000)	-	-	-	-	-	-	(10,000,000)
Total Investing outflows	**(12,857,143)**	**(3,000,000)**	**(11,488,490)**	**16,458,489**	**(5,000,000)**	**-**	**-**	**-**	**(15,887,143)**
Financing In/Outflows									
Quarterly Dividend Payment	-	-	-	(2,090,647)	-	(2,090,647)	(2,090,647)	(2,090,647)	(8,362,589)
Interest Expense on LT Debt	(481,457)	-	-	(1,203,726)	-	-	(1,186,097)	(1,186,097)	(4,057,377)
Total Financing flows	**(481,457)**	**-**	**-**	**(3,294,373)**	**-**	**(2,090,647)**	**(3,276,744)**	**(3,276,744)**	**(12,419,966)**
Total Net Cash Flows	**2,183,520**	**(871,419)**	**(8,381,185)**	**22,846,727**	**(2,971,579)**	**(4,024,184)**	**6,561,256**	**5,041,703**	**20,384,838**
Ending Cash Balance	**23,548,821**	**22,677,402**	**14,296,217**	**37,142,943**	**34,171,364**	**30,147,180**	**36,708,437**	**41,750,140**	**41,750,140**
Warehouse Balance:	42,857,143	47,857,143	40,000,000	25,000,000	25,000,000	25,000,000	**25,000,000**	**25,000,000**	**25,000,000**
Warehouse Capacity	**(7,142,857)**	**(2,142,857)**	**(10,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**
Ending Cash Balance @ $50M W/H	**16,405,964**	**20,534,545**	**4,296,217**	**12,142,943**	**9,171,364**	**5,147,180**	**11,708,437**	**16,750,140**	**16,750,140**

CIFC Asset Management

Cash Flow Projections

($ in Actual)	1Q 2015	2Q 2015	3Q 2015	4Q 2015	Total 2015	Total 2016
Beginning Cash	**41,750,140**	**39,668,810**	**52,144,623**	**72,586,843**	**41,750,140**	**69,203,387**
Total Advisory Fees and NII	**24,181,674**	**23,322,619**	**31,289,028**	**38,598,074**	**117,391,395**	**164,112,849**
Operating outflows						
Merger Payment- Columbus Nova	-	-	-	-	-	-
Due from Broker	-	-	-	-	-	-
Due to Broker	-	-	-	-	-	-
Compensation (Base & Benefits only)	(3,803,989)	(3,803,989)	(3,803,989)	(3,803,989)	(15,215,957)	(15,976,755)
Compensation - Bonus (Prior Year)	(9,679,937)	-	-	-	(9,679,937)	(10,163,934)
G&A Expense (EBITDA basis)	(3,397,461)	(3,397,461)	(3,397,461)	(3,397,461)	(14,577,716)	(15,306,602)
Capex	(375,000)	(375,000)	(375,000)	(375,000)	(1,500,000)	(1,500,000)
Insurance Premium	-	-	-	-	(1,811,250)	(1,901,813)
Taxes	(5,736,260)	-	-	-	(22,945,039)	(28,155,615)
Total Operating outflows	**(22,992,647)**	**(7,576,450)**	**(7,576,450)**	**(7,576,450)**	**(65,729,900)**	**(73,004,719)**
Investing In/Outflows						
CLO Equity						
(Purchase) / Sales - SSCLF	-	-	-	-	-	-
(Purchase) / Sales - Discretionary	-	-	-	-	-	-
Loan Funds						
CLO Opportunity Fund - Seed Capital	-	-	-	-	-	-
BDC Fund - Seed Capital	-	-	-	-	-	-
CLO Control Equity Fund - Seed Capital	-	-	-	-	(10,000,000)	-
Distressed Fund - Seed Capital	-	-	-	-	-	(10,000,000)
Warehousing Activity						
2014 W/H Investments	-	-	-	-	-	-
2014-II W/H Investments	-				-	-
W/H Gain and Carried Interest	-	-	-	-	-	-
2014-III BNP W/H Investment	-	-	-	-	-	-
2014-V Citi W/H Investment	-	-	-	-	-	-
Total Investing outflows	**-**	**-**	**-**	**-**	**(10,000,000)**	**(10,000,000)**
Financing In/Outflows						
Quarterly Dividend Payment	(2,090,647)	(2,090,647)	(2,090,647)	(2,090,647)	(8,362,589)	(8,362,589)
Interest Expense on LT Debt	(1,179,710)	(1,179,710)	(1,179,710)	(1,179,710)	(5,845,659)	(7,360,720)
Total Financing flows	**(3,270,357)**	**(3,270,357)**	**(3,270,357)**	**(3,270,357)**	**(14,208,248)**	**(15,723,309)**
Total Net Cash Flows	**(2,081,330)**	**12,475,812**	**20,442,221**	**27,751,267**	**27,453,247**	**65,384,821**
Ending Cash Balance	**39,668,810**	**52,144,623**	**72,586,843**	**100,338,111**	**69,203,387**	**134,588,208**
Warehouse Balance:	25,000,000	25,000,000	25,000,000	25,000,000	**25,000,000**	**25,000,000**
Warehouse Capacity	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**	**(25,000,000)**
Ending Cash Balance @ $50M W/H	**14,668,810**	**27,144,623**	**47,586,843**	**75,338,111**	**44,203,387**	**109,588,208**

CIFC Asset Management

Appendix A: Capex Details

Capex Proposal for 2014

New 2014 Projects	2014 Capex Budget I: Sustain Business	2014 Capex Budget II: Need to Have	2014 Capex Budget Total Tier I & II	2014 EBITDA Run Rate Expense I: Sustain Business	2014 EBITDA Run Rate Expense II: Need to Have	2014 EBITDA Run Rate Expense Total Tier I & II	Comments
Infrastructure Projects for 2014							
Disaster Recovery Hotsite Server and DB Setup for Real-Time Back Up & Recovery	225,000	-	225,000	25,000	-	25,000	Upgrade to real-time Disaster Recovery backup (from once a day)
Core Network Upgrade	325,000	-	325,000	75,000	-	75,000	Upgrade CIFC's network infrastructure which is aging and mostly acquired during DFR transaction, resulting in frequent breakdowns.
Virtualization Phase 2	-	200,000	200,000	-	-	-	Recovery in case of hardware failure
Database Upgrades	-	50,000	50,000	-	-	-	Increase DB performance by 50%
Security Upgrades	-	25,000	25,000	-	15,000	15,000	Firewalls and routine monitoring (Includes Nessus)
Email Environment Upgrade	-	300,000	300,000	-	-	-	Infrastructure Upgrade to improve email reliability to 99.9% (8 hours of outage / year) from 99.5% reliability.
Desktop Upgrades / Laptops / iPads	-	50,000	50,000	-	-	-	Improve performance and team efficiency
Printer additions	-	25,000	25,000	-	12,000	12,000	Reshape copy room to allow more space for new printer
Telephony Upgrade	-	-	-	-	-	-	Upgrade from Shoretel to CISCO for better integration with Turret phones
Infrastructure Subtotal	$ 550,000	$ 650,000	$ 1,200,000	$ 100,000	$ 27,000	$ 127,000	
Application Development New Projects for 2014							
General Ledger System Replacement	150,000	-	150,000	(5,000)	-	(5,000)	Current GL (i.e., CODA) requires an in-house programmer for a cost of $225K - $250K / year. License fee of $23K / year offset by CODA of $17K.
CODA/data migration to new GL	100,000	-	100,000	-	-	-	CODA needs a full time consultant since it breaks down frequently and product support is non existent. We anticipate reducing the resource to part time starting Feb. 1 and needing assistance with migrating to new GL system.
Portfolio Optimizer	50,000	-	50,000		-	-	Will create an optimum portfolio from approved list based on specific parameters.
Prophet CRM	-	-	-	20,000	-	20,000	To replace Salesforce.
Outsourced Quality Assurance	75,000	-	75,000	-	-	-	To improve reliability of new product development being released into production. Plan to use offshore resources in India to help improve controls around the software development lifecycle.
Outsourced Development	50,000	-	50,000		-	-	Will help reduce reliance on using expensive US-based resources for development.
Data Warehouse Phase 2	-	100,000	100,000	-	10,000	10,000	To facilitate GIPS Compliance, reduce dependence on multiple excel spreadsheets, and streamline information across various Legacy systems.
Website Enhancements		25,000	25,000		2,000	2,000	To satisfy more complex website enhancement requests
Expected New Projects / Cushion		50,000	50,000		-	-	
Intranet		-	-		-	-	For employees only, increased accessibility to centralized location for workflows
Systems Subtotal	$ 425,000	$ 175,000	$ 600,000	$ 15,000	$ 12,000	$ 27,000	
Other New Projects for 2014							
Cabinets, Dishwasher & Ice machine in Pantry	-	25,000	25,000	-	-	-	Installed ice maker in refridgerator in 2013. Runs out of ice by 11 AM. Also, open garbabe containers do not give a professional look and feel. Need to build cabinets and space for hidden garbage bins in North Pantry.
Change microphone system in Board Room	-	-	-	-	-	-	
Other Projects Subtotal	$ -	$ 25,000	$ 25,000	$ -	$ -	$ -	
Total New Projects	**$ 975,000**	**$ 850,000**	**$ 1,825,000**	**$ 115,000**	**$ 39,000**	**$ 154,000**	
Carryforward of Projects from 2013*							
Investran - Fund Partnership Accounting System	125,000	-	125,000	55,000	-	55,000	
Attribution Analysis	-	155,000	155,000	-	25,000	25,000	
GIPS Performance	-	-	-	-	-	-	
Work in Progress Carryforward	134,344	-	134,344	-	-	-	Incl. BMS Phase 2.0 and WSO Accounting Module.
Other Carryforward	116,586	25,000	141,586	-	-	-	
Total Carryforward of Projects from 2013	375,930	180,000	555,930	55,000	25,000	80,000	
Projects Total	**$ 1,350,930**	**$ 1,030,000**	**$ 2,380,930**	**$ 170,000**	**$ 64,000**	**$ 234,000**	

*This EBITDA impact of Capex items approved was erroneously missed in the 2013 Budget.

CIFC Asset Management

2013 Capex Update

Project/Vendor	Completion (%)	2013 Capex Budget	2013 Analysis YTD Actual	Breakout of Unused Capex Budget: Savings / (Over-run)	Tier I/II Carry Forward	Postponed (Tier III) CF	Run-Rate EBITDA Impact*	Urgent = 1
Software								
Operations								
Automated Trustee Reconciliations	0%	20,000	-	20,000	-	-	-	
Automation of Internal Loan Pricing Model	0%	15,000	-	-	-	15,000	-	Level 3
DTCC Positions Auto-Reconciliation	0%	25,000	-	-	-	25,000	-	Level 3
Automation for NAV Funds	100%	10,000	-	10,000	-	-	-	
Total Operations		**$ 70,000**	**$ -**	**$ 30,000**	**$ -**	**$ 40,000**	**$ -**	
Investment Management								
Data Warehousing - Phase I (Northpoint Consulting)	61%	300,000	183,414	-	116,586	-	-	Level 1 (work in progress)
Blackmountain Systems Phase 2.0	62%	170,000	105,656	-	64,344	-	-	Level 1 (work in progress)
GIPS Compliant Performance System	0%	195,000	-	-	-	195,000	144,000	Level 3
Attribution Analysis / Performance	0%	155,000	-	-	155,000	-	25,000	Level 2
CLO Process Enhancements (Majority is BMS related)	100%	75,000	-	75,000	-	-	-	
Client Reporting Enhancements - All Products (BMS related)	100%	75,000	-	75,000	-	-	-	
CIFC Parent CLO Equity Trades in BMS	100%	15,000	-	15,000	-	-	-	
Total Information and Technology		**$ 985,000**	**$ 289,070**	**$ 165,000**	**$ 335,930**	**$ 195,000**	**$ 169,000**	
Finance & Accounting								
Expected New Projects / Cushion - Additional CODA spend	100%	100,000	100,000	-	-	-	-	
CODA: Report Building/Enhancements, Accts Payable module	50%	75,000	151,504	(76,504)	-	-	-	
Streamline Transactions from WSO Admin to G/L (WSO Accounting Module)	0%	70,000	-	-	70,000	-	-	Level 1 (work in progress)
Report Automations in WSO	100%	50,000	-	50,000	-	-		
Partnership Accounting System	0%	225,000	-	100,000	125,000	-	55,000	Level 1 (work in progress)
Options tracking / valuing systems	0%	30,000	-	-	-	30,000	10,000	Level 3
Total Finance & Accounting		**$ 550,000**	**$ 251,504**	**$ 73,496**	**$ 195,000**	**$ 30,000**	**$ 65,000**	
Subtotal		**$ 1,605,000**	**$ 540,574**	**$ 268,496**	**$ 530,930**	**$ 265,000**	**$ 234,000**	
Hardware								
Dell	100%	150,000	77,906	72,094	-	-	-	
Turret Phones - IPC Systems	100%	100,000	89,437	10,563	-	-	-	
CDW	100%	100,000	97,371	2,629	-	-	-	
PTS Data	100%	-	4,332	(4,332)	-	-	-	
Infrastructure - Server Improvement (Virtualization)	72%	75,000	54,331	20,669	-	-	-	
Infrastructure - Citrix Expansion	100%	50,000	42,820	7,180	-	-	-	
Eastern Data Comm	87%	45,000	39,242	5,758	-	-	-	
Infrastructure - Email Improvement	100%	25,000	-	-	25,000	-	-	Level 2
Subtotal		**$ 545,000**	**$ 405,439**	**$ 114,561**	**$ 25,000**	**$ -**	**$ -**	
Grand Total		**$ 2,150,000**	**$ 946,013**	**$ 383,057**	**$ 555,930**	**$ 265,000**	**$ 234,000**	

*This EBITDA impact of Capex items approved was erroneously missed in the 2013 Budget.

CIFC Asset Management

Appendix A: Capex Details

Details of Rent and Insurance

Department	2013 Budget	2013 Actual through 12/31/13	2014 Budget	Notes
Insurance Expense				
Insurance - D&O and E&O				
Krauter & Company	1,552,729	1,537,328	1,650,000	
Insurance - D&O and E&O Total	**1,552,729**	**1,537,328**	**1,650,000**	
Insurance - P&C				
The Hartford	-	11,398	75,000	Missed in 2013 budget and expensed 2013
Insurance - P&C Total	**-**	**11,398**	**75,000**	
Insurance Expense Subtotal	**1,552,729**	**1,548,726**	**1,725,000**	
Insurance Run Off Policies (Non-Cash)				
Krauter & Company	351,676	351,676	351,676	Amortization
Mesirow Insurance Se	42,500	41,135	42,500	Amortization
Insurance Run Off Policies (Non-Cash)	**394,176**	**392,811**	**394,176**	
Grand Total	**1,946,905**	**1,941,537**	**2,119,176**	Excludes one-time 2013 Change of Control charge related to CN transaction.

Department	2013 Budget	2013 Actual through 12/31/13	2014 Budget	Notes
Occupancy				
250 Park Avenue - Utilities				
Various Vendors	-	148,370	150,000	For utilities and other expenses paid to
250 Park Avenue - Utilities Total	**-**	**148,370**	**150,000**	
Building Maintenance				
Perfect Building	40,000	49,193	50,000	
Building Maintenance Total	**40,000**	**49,193**	**50,000**	
Commercial Rent Tax				
NYC Dept. Of Finance	-	47,785	70,000	3 months rent free in 2013.
Commercial Rent Tax Total	**-**	**47,785**	**70,000**	
Rent Smoothing				
250 Park	175,022	175,022	(226,643)	3 months free rent in 2012 & 2013 only ($400K /
Rent Smoothing Total	**175,022**	**175,022**	**(226,643)**	
Rent Cash				
250 Park	1,204,995	1,204,995	1,606,660	Increase due to end of abatement period.
Rent Cash Total	**1,204,995**	**1,204,995**	**1,606,660**	
Grand Total	**$ 1,420,017**	**$ 1,625,364**	**$ 1,650,017**	

Details of Professional Fees > $50K

Professional Fees by Department	2013 Budget	2013 Actuals	2014 Budget	Comments
Board of Directors & CEO				
Consultants	50,000	840	50,000	
Capital Markets & Distribution				
Greensledge	250,000	113,604	-	Cancelled contract
Other CMD <$50K ea.	-	7,398	-	
Subtotal CMD	**250,000**	**121,002**	**-**	
Corporate				
Recruiting	450,000	394,124	200,000	
Northpoint Consulting	125,000	93,675	-	
Fund Expenses (Non-reimbursable)	-	64,185	35,000	Incl. legal and tax fund expenses not reimbursed.
Other Corproate Professional Fees <$50K ea.	121,000	160,836	30,000	
Corporate Subtotal	**696,000**	**712,821**	**265,000**	
Finance & Operations				
Audit Fees	2,232,500	2,100,000	1,800,000	
Tax Preparation & Consulting	305,000	341,206	250,000	Reduced due to hire of part time tax VP.
Tax Planning	-	92,040	50,000	
SOX Controls / Internal Audit	300,000	100,000	100,000	Hired internal auditor in 2013, need part-time help for year end testing
Valuation	65,400	37,337	65,000	
Temporary Staff - Finance	145,243	122,773	75,000	Parental leave, assistance during peak periods, current temp staff
Temporary Staff - Operations	40,000	167,535	100,000	on CDOs, and unseen turnover.
Other Finance & Operations <$50K ea.	17,094	60,907	50,000	Incl. GL - Unit 4 CODA
Finance & Operations Subtotal	**3,105,237**	**3,021,797**	**2,490,000**	
Legal IA & HR				
New Product Development	450,000	318,311	300,000	PNC Middle Market W/H ($170K), Credit Opps Fund ($105K), Co-Invest. Excess ($55K), SSCL Fund ($13K)
Public Company Matters	400,000	240,450	300,000	
HarbourVest	-	50,917	-	
Aozora CDO claim	-	81,999	250,000	Aozora filed complaint related to Deerfield Buckingham III CDO.
Exchange Related	50,000	59,542	75,000	
Annual Meeting	77,000	50,217	55,000	
Interim AG	-	94,960	75,000	JM returns approx. mid-March from parental leave.
Employment Matters	50,000	27,476	50,000	Misc. legal advice re RIFs and other HR matters.
Regulatory	47,500	7,251	50,000	ACA and other compliance misc.
Ordinary Legal Fees	68,500	139,963	85,000	Incl. a soft accrual of $110K.
Legal IA & HR	**1,143,000**	**1,071,088**	**1,240,000**	
Reversal of 2012 over accruals	-	(281,728)	-	
New Product Development - Misc.	-	(65,535)	-	
Total	**5,244,237**	**4,580,284**	**4,045,000**	

CIFC Asset Management

Details of Subscriptions > $50K

Subscriptions by Department	2013 Budget	2013 Total	2014 Budget	2014 Fund Allocation	2014 Total Spend	Notes
Investment Management						
Kanerai	366,563	311,451	522,600	-	522,600	2013 was a partial year that included a free trial period
Markit Bond Feed	-	25,000	25,000	-	25,000	Markit Bond Feed into Kanerai, 100% charged to CIFC AM
Black Mountain System	-	4,839	7,515	264,673	272,188	Expenses unreimbursed from funds.
Bloomberg Terminals	95,700	274,843	610,000	-	610,000	Provide 13 new BB Terminals for $21K each by April 2014. Full year for 17 existing
Bloomberg Terminals for New Hires	-	-	46,000	-	46,000	Provide 4 new BB Terminals at $21K each, beginning July.
Bloomberg Data (ratings, payment data)	-	1,800	20,544	47,856	68,400	Unreimbursed expenses allocated to CDOs.
Intex	177,886	(41,035)	200,498	183,832	384,329	50% paid by funds. Corporate expense ($99K), Reversal of 2012 Over Accrual $(176)K.
Xtract Credit Research	76,500	159,638	76,500	-	76,500	Incl. two annual payments for 2-Yr contract; contract set to expire Feb. 2014.
CDO Sentry	-	94,403	81,900	81,900	163,800	Allocable to funds, expect unreimbursed expense for 4 funds: MidOcean I & II, Northlake, and RiverNorth $20.5K each. Increase due to run off of CDO/ABS AUM of $1.4B in 2013.
Generic Subscriptions	5,000	9,631	15,000	-	15,000	Incl. Capital Economics
Subtotal	721,648	840,570	1,605,557	578,260	2,183,817	
Moody's Investor Service - Ratings Feed	-	67,525	10,000	75,630	85,630	Unreimbursed fund expense - private credit ratings
Moody's Analytics - CreditView	33,000	32,800	32,800	-	32,800	
Moody's Analytics - CDO Net	145,000	142,142	-	-	-	January 2014 contract termination of CDO Net.
Moody's Subtotal	178,000	242,467	42,800	75,630	118,430	
Thomson Reuters	-	28,851	-	-	-	Prior period bills paid in 2013.
Thomson Reuters - Gold Sheets / LPC	10,489	10,489	10,489	-	10,489	
Thomson Reuters - SMI Loan Pricing	-	28,143	31,216	-	31,216	Expect to terminate in August 2014. Replaced by Bloomberg terminals.
Thomson Reuters - IFR	3,500	9,759	-	-	-	Cancel for 2014.
Thomson Reuters Markets	-	(0)	-	-	-	
Thomson Reuters Subtotal	13,989	77,242	41,705	-	41,705	
S&P Securities Evaluation	-	50,044	-	-	-	Prior period bills paid in 2013.
S&P Capital IQ	95,000	-	33,530	-	33,530	Expect to terminate in April 2014. Replaced by Bloomberg terminals.
S&P Ratings Feed	44,000	-	2,931	94,669	97,600	Cusip Services: $10K / year contract with Deerfield; 2200 securities
S&P LCD News & Research Service	68,750	65,000	70,000	-	70,000	2013 contract: $60K.
S&P Structured Finance (CLO Ratings)	13,750	-	22,750	-	22,750	
S&P Cusip Services	25,000	37,285	10,000	-	10,000	
S&P ABS Prices	-	-	3,604	8,396	12,000	
S&P Subtotal	246,500	152,330	142,815	103,065	245,880	
Investment Management Subtotal	**1,160,137**	**1,312,608**	**1,832,877**	**756,955**	**2,589,832**	

CIFC Asset Management

Details of Technology > $50K

Technology by Department	2013 Budget	2013 Actuals	2014 SG&A Budget	2014 Capex Spend	2014 Fund Allocation	Notes
Information Technology						
Infrastructure Projects for 2014 (Tier I & II)						
Disaster Recovery - Data Backup Enhancement	-	-	25,000	225,000	-	Sungard
Core Network Upgrade	-	-	75,000	325,000	-	Upgrade CIFC's network infrastructure since Deerfield merger
Security Upgrades	-	-	15,000	25,000	-	Infrastructure - Security Monitoring; Vendor: Nessus
Printers - Additions	-	-	12,000	25,000	-	
Infrastructure Projects for 2014 Subtotal	-	-	127,000	600,000	-	
Software Projects for 2014						
General Ledger System Replacement	-	-	12,250	110,000	-	Microsoft Dynamics
Prophet CRM	-	-	20,000	-	-	
Data Warehouse Phase 2	-	-	10,000	100,000	-	
Website Enhancements	-	-	2,000	25,000	-	Website Enhancements
Intranet	-	-	-	50,000	-	
Software Projects for 2014 Subtotal	-	-	44,250	285,000	-	
Carryforward for SG&A from 2013 Projects (Tier I & II)						
Partnership Accounting System	-	-	55,000	125,000	-	
Attribution Analysis / Performance	-	-	25,000	155,000	-	
Carryforward for SG&A from 2013 Subtotal	-	-	80,000	280,000	-	
SG&A Related to Capex Projects	**-**	**-**	**251,250**		**-**	Differs from Capex budget due to $12,250K in GL System Replacement.
New 2014 Services						
Internet - Replacing XO Internet	-	-	25,000	-	-	Vendor: Windstream
24/7 Infrastructure Support Vendor	-	-	100,000	-	-	Infrastructure Projects
Bloomberg Data Lines	-	-	18,000	-	-	
IT Buffer	15,000	-	25,000	-	-	
New 2014 Services Subtotal	15,000	-	168,000	-	-	
Existing Services						
Disaster Recovery - Hotsite	55,000	44,141	84,000	-	-	Upgraded disaster recovery; vendor: Sungard
Disaster Recovery - Data Backup	-	-	60,000	-	-	Recover to cloud
On-site Support: Fairdinkum	150,000	89,108	100,000	-	-	Increase due to additional employees and new infrastructure
Infrastructure Projects	78,000	74,526	85,000	-	-	Incl. Process Scheduler, Network Monitoring, Desktop Management, and Security Audit
Infrastructure - Unallocated	-	-	-	-	-	
Telephony - Maintenance	-	(7,472)	10,000	-	-	
Email - Archiving - Current	8,000	11,022	8,000	-	-	
Telephone and Networking	151,000	206,910	210,000	-	-	
Office - Printers and Maintenance	108,000	86,459	100,000	-	-	
Research/Technology Insights	-	-	12,000	-	-	Incl. research reports and rankings for IT firms.
Existing Services Subtotal	550,000	504,692	669,000	-	-	
Other Technology less than $50K ea.	107,120	87,532	141,000	-	-	
Technology Total	**672,120**	**592,224**	**1,229,250**	**-**	**-**	

CIFC Asset Management

Details of T&E

Department	2013 Budget	2013 Actual through 12/31/13	2014 Budget	Increase vs. 2013A (%)	Notes
T&E					
Board of Directors	**5,000**	**11,802**	**50,000**	323.6%	
CEO	**84,000**	**38,770**	**38,000**	-2.0%	
Capital Markets & Distributions	**216,000**	**208,517**	**250,000**	19.9%	Expanded outreach - 2 new MDs hired in late 2013
Corporate					
Holiday Party	20,000	13,000	20,000	0.0%	
T&E	-	789	-	0.0%	
T&E (Car Service)	75,000	27,418	30,000	0.0%	
T&E (Admin. Seamless)	-	8,760	7,000	0.0%	
Finance	**-**	**78,631**	**65,000**	**0.0%**	
Information Technology	**-**	**4,708**	**3,000**	**0.0%**	
Investment Management	**175,000**	**171,644**	**200,000**	**0.0%**	
Operations	**-**	**6,475**	**7,000**	**0.0%**	
Legal IA & HR	**-**	**9,431**	**10,000**	0.0%	
Grand Total	**$ 575,000**	**$ 579,945**	**$ 680,000**	**18.3%**	

Details of SG&A – By Department & Category > $50K

SG&A by Department	2013 Budget	2013 Actuals	2014 Budget	Comments
Board of Directors & CEO				
Equity Based Compensation	285,000	150,000	150,000	
Meeting Committee and Participation Fees	247,500	335,081	250,000	
American Banker	1,200	1,470	2,500	
Institutional Investor	-	2,450	3,000	
Miscellaneous	-	58,137	4,500	
Board of Directors & CEO Subtotal	**533,700**	**547,138**	**410,000**	
Capital Markets & Distribution				
Conferences	100,001	98,578	100,000	
Charitable Events	-	5,000	-	
Consulting TBD	100,000	-	-	
Other CMD SG&A <$50K ea.	13,879	15,412	15,000	
Capital Markets & Distribution Subtotal	**213,880**	**118,990**	**115,000**	
Corporate				
Bank Fees	-	74,553	70,000	
Franchise Taxes	184,000	220,455	183,918	Incl. penalties and interest of $36K over the budget.
Fund Expenses (Nonreimbursable)	27,112	49,914	50,000	Subscription fund expenses are incl. as adjustments in Subscriptions.
Fungible Subscriptions Cushion	68,000	-	-	
Membership Fees and Staff Reimbursements	46,071	35,653	47,000	Incl. Creditflux, IACPM, and LSTA
Staff Reimbursements - CFA, CPA, JD	-	2,743	15,000	
Office Related				
Courier Services and Postal	22,000	20,008	25,000	
Graphic Design	2,000	500	-	
Maintenance for AC - D.P. Wolff Inc.	4,000	4,091	4,000	
Office Equipment	10,000	2,922	5,000	
Office Supplies and Kitchen	82,000	112,016	125,000	
Shredding and Storage	69,900	29,978	50,000	
Subtotal Office Related	189,900	169,516	209,000	
Payroll Service Fees	138,108	127,790	60,000	
PR Newswire	24,000	26,180	25,000	
Taxes	-	(1,753)	-	
Team Building	15,000	1,137	-	
Temporary Administration	25,000	-	-	
Other Corproate SG&A <$50K ea.	75,000	19,539	25,000	
Corporate Subtotal	**792,191**	**725,726**	**684,918**	

CIFC Asset Management

Details of SG&A – By Department & Category > $50K (cont.)

SG&A by Department	2013 Budget	2013 Actuals	2014 Budget	Comments
Finance				
Research - Accounting	5,000	9,279	6,500	
Research - Tax	-	-	10,000	Thomson Reuters tax research tools.
SEC Reporting - Webfilings	58,972	77,139	60,000	
Miscellaneous	10,000	7,840	15,000	
Finance Subtotal	**73,972**	**94,258**	**91,500**	
Operations				
Miscellaneous	-	15,463	15,000	
Operational Compliance Audit	40,000	-	-	
Outsourced Cash Reconciliation	-	-	60,000	
Process Manuals and User Guides - Phase I	50,000	-	-	
WSO Related				
Markit Dist. License	25,000	-	-	
Markit Pricing	-	-	3,003	
WSO Accounting Module	-	40,000	40,000	
WSO Administrator Software	-	-	8,116	
WSO Compliance Modeling	-	-	5,000	
WSO Compliance Module for Navigator/GE	-	75,000	-	
WSO Fax and Data	-	-	6,350	
WSO Fund Expense	35,384	105,264	50,000	
WSO Training	-	-	10,000	
Subtotal WSO	60,384	220,264	122,469	
Operations Subtotal	**150,384**	**235,727**	**197,469**	
Primus I Reimbursement	-	(197,557)	-	
SG&A Total	**1,764,127**	**1,524,282**	**1,498,887**	

CIFC Asset Management

Exhibit 2c

EXHIBIT 2c
(Proposed Resolution re 2014 Revised Budget)

WHEREAS, the Board conditionally approved a budget for 2014 on January 28, 2014 (the "Original 2014 Budget");

WHEREAS, Management provided to the Board a proposed revision to the Original 2014 Budget dated February __, 2014 (the "Revised 2014 Budget");

WHEREAS, upon motion made and seconded, the Board deems it advisable to approve the Revised 2014 Budget, in the form presented at the meeting;

NOW THEREFORE BE IT

RESOLVED, that the Board hereby approves and adopts in all respects the Revised 2014 Budget in the form presented at the meeting.

Exhibit 3

To be Provided Separately

Exhibit 4

EXHIBIT 4

(Proposed Resolutions re Declaration of Dividend)

WHEREAS, the Company wishes to use a portion of its available cash to declare a dividend of $0.10 per share (the "Dividend") with respect to all of its outstanding shares of common stock, par value $0.001 per share (the "Common Stock"):

NOW THEREFORE BE IT

RESOLVED, that, after consideration of the information provided by Management, including the Company's financial statements and other relevant information, the Board has determined that the Company has a surplus in excess of the Dividend; and be it further

RESOLVED, that the record date (the "Record Date") for determining the holders of shares of Common Stock entitled to participate in the Dividend is April [4], 2014; and be it further

RESOLVED, that the Dividend be, and hereby is, approved; and that the Company's officers are instructed to pay the Dividend on April [25], 2014; and be it further

RESOLVED, that American Stock Transfer & Trust Company (the "Transfer Agent") is hereby approved to serve as the transfer agent and registrar for the payment of the Dividend, that the Company hereby adopts the Transfer Agent's standard form of resolutions relating to such appointment in connection with the payment of the Dividend and that the Secretary of the Company is hereby directed to file a copy of any such resolutions in the minute book of the Company; and be it further

RESOLVED, that the Company's officers be, and each of them acting singly hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to obtain any consents or assignments, provide any notice, negotiate, execute and deliver such other documents, instruments or certificates, make all such payments, make all such filings, and do all such other acts or things that any such officer may deem necessary or desirable in connection with the Dividend and the foregoing resolutions; and be it further

RESOLVED, that all actions taken by the Board and the Company's officers in connection with any and all of the transactions referred to in or contemplated by any of the foregoing resolutions be, and hereby are, ratified, approved and confirmed in all respects.

Exhibit 5a

FIELDSTONE
INSURANCE GROUP, LLC

Request for Proposal Report
Provider Comparison Analysis

CIFC, Corp.

Provided By: Jason Duffy

10/28/2013

Securities and Investment Advisory Services Offered Through M Holdings Securities, Inc., a Registered Broker/Dealer and Investment Advisor, Member FINRA/SIPC. Fieldstone Insurance Group, LLC is Independently Owned and Operated.

Plan Cost Summary (Year 1)

Company Name	CIFC Corp.
Plan Assets Total	$1,200,000
Number of Participants	60
Number of Eligible Employees	70
Estimated Annual Contribution to Plan	$500,000

	Nationwide	ING	American Funds
Set Up Fees			
Recordkeeping Setup Fee	$ -	$ -	$ 1,000
Administration Setup Fee	$ 1,250	$ 1,250	$ 1,250
Total Set Up Fees	$ 1,250	$ 1,250	$ 2,250
Recordkeeping Fees			
Flat Fee	$ -	$ -	$ 5,800
Asset Based Fee (%)	0.50%	0.45%	0.00%
Asset Based Fee ($) (Plan Assets x .01 x Asset Based Fee(%))	$ 6,000	$ 5,400	$ -
Total Recordkeeping Fees	$ 6,000	$ 5,400	$ 5,800
Administrative Fees			
Base Fee	$ 1,250	$ 1,250	$ 1,250
Per Participant Fee	$ 1,500	$ 1,500	$ 1,500
Total Administration Fee	$ 2,750	$ 2,750	$ 2,750
Investment Expense			
Adjusted Weighted Average Net Investment Expense Ratio (%)	0.19%	0.28%	0.41%
Net Expense ($) (Assets x .01 x net expense ratio)	$ 2,280	$ 3,360	$ 4,920

M Financial Group

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Plan Cost Summary (Year 1)

Company Name	CIFC Corp.
Plan Assets Total	$1,200,000
Number of Participants	60
Number of Eligible Employees	70
Estimated Annual Contribution to Plan	$500,000

	Nationwide	ING	American Funds
Advisor Fee			
Advisor Asset Based Fee (%)	0.15%	0.15%	0.15%
Advisor Fee ($) (Plan Assets x advisor asset based fee)	$ 1,800	$ 1,800	$ 1,800
Advisor Flat Fee ($)	$ -	$ -	$ -
Total Advisor Fee	$ 1,800	$ 1,800	$ 1,800
Total Gross Estimated Expense			
Gross Expense (Inclusive of Setup Fees)	**$ 14,080**	**$ 14,560**	**$ 17,520**
Credit			
First Year TPA Credit	$ -	$ -	$ -
Ongoing TPA Revenue Sharing	$ -	$ -	$ -
Recordkeeper Revenue Sharing	$ -	$ (1,800)	$ (600)
Total Credits	**$ -**	**$ (1,800)**	**$ (600)**
Net Expense (First Year)			
Gross Expense less Credits	**$ 14,080**	**$ 12,760**	**$ 16,920**
Net Expense as a percentage of assets	1.17%	1.06%	1.41%

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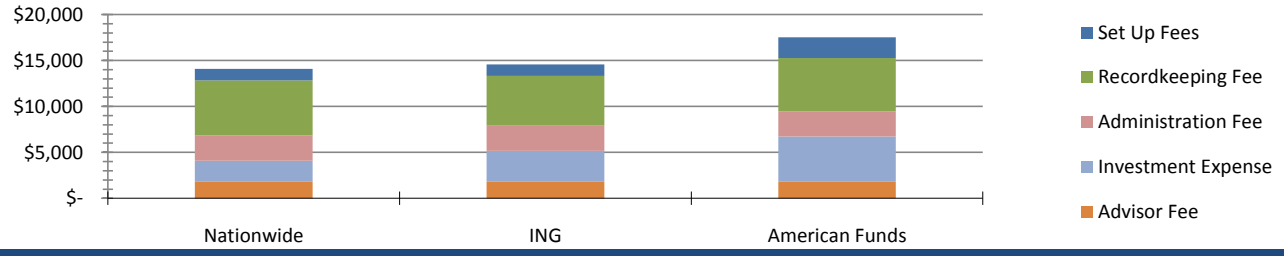
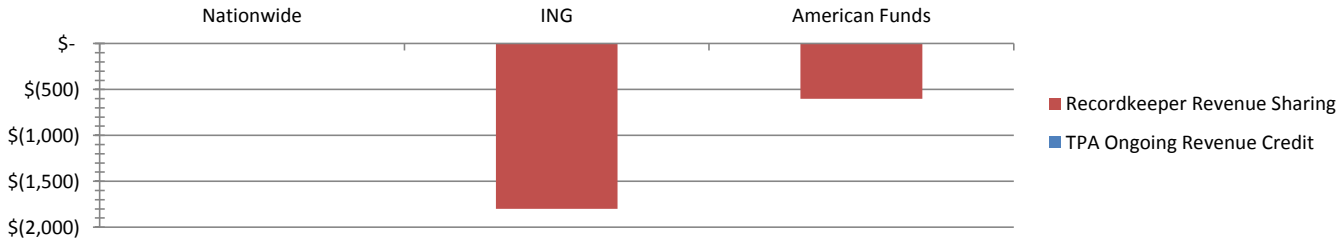
Gross Plan Expenses (First Year)

Total gross expenses reflected as a dollar amount and inclusive of any plan setup fees



Credits (First Year)

Inclusive of ERISA offset credits by the recordkeeper and/or TPA



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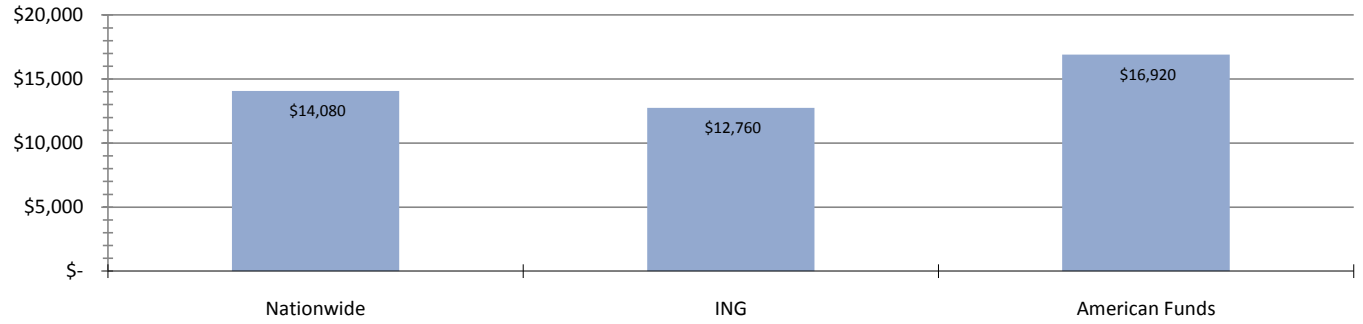
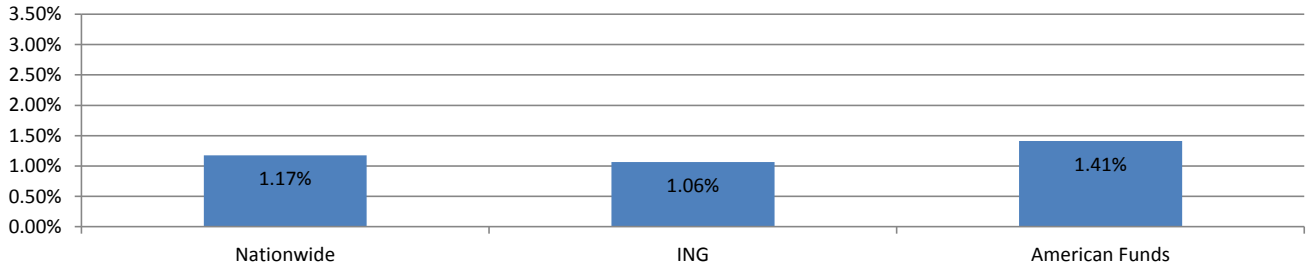
Net Plan Expenses (First Year)

Total Net Expenses reflected as a dollar amount and reflects gross expenses less ERISA Credits



Net Plan Expense as a Percentage of Assets (First Year)

Total Net Expenses reflected as a dollar amount as a percentage of assets and inclusive of any plan set up fees and ERISA account offsets



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Plan Cost Summary (Year 2 - Estimated)

Assumes 10% growth in assets, 5% growth in number of plan participants and eligible employees and 5% growth in annual contributions

Company Name	CIFC Corp.
Plan Assets	$1,320,000
Number of Participants	63
Number of Eligible Employees	74
Estimated Annual Contribution to Plan	$525,000

	Nationwide	ING	American Funds
Recordkeeping Fees			
Flat Fee	$ -	$ -	$ 5,800
Asset Based Fee (%)	0.50%	0.45%	0.00%
Asset Based Fee ($) (Plan Assets x .01 x Asset Based Fee)	$ 6,600	$ 5,940	$ -
Total Recordkeeping Fees	$ 6,600	$ 5,940	$ 5,800
Administrative Fees			
Base Fee	$ 1,250	$ 1,250	$ 1,250
Per Participant Fee	$ 1,575	$ 1,575	$ 1,575
Total Administration Fee	$ 2,825	$ 2,825	$ 2,825
Investment Expense			
Adjusted Weighted Average Net Investment Expense Ratio (%)	0.19%	0.28%	0.41%
Net Expense ($) (Assets x .01 x net expense ratio)	$ 2,508	$ 3,696	$ 5,412

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Company Name	CIFC Corp.
Plan Assets	$1,320,000
Number of Participants	63
Number of Eligible Employees	74
Estimated Annual Contribution to Plan	$525,000

	Nationwide	ING	American Funds
Advisor Fee			
Advisor Asset Based Fee (%)	0.15%	0.15%	0.15%
Advisor Fee ($) (Plan Assets x advisor asset based fee)	$ 1,980	$ 1,980	$ 1,980
Advisor Flat Fee ($)	$ -	$ -	$ -
Total Advisor Fee	$ 1,980	$ 1,980	$ 1,980
Total Gross Estimated Expense			
Gross Expense	**$ 13,913**	**$ 14,441**	**$ 16,017**
Credit			
Ongoing TPA Revenue Sharing	$ -	$ -	$ -
Recordkeeper Revenue Sharing	$ -	$ (1,980)	$ -
Total Credits	**$ -**	**$ (1,980)**	**$ -**
Net Expense			
Gross Expense less Credits	**$ 13,913**	**$ 12,461**	**$ 16,017**
Net Expense as a percentage of assets	1.05%	0.94%	1.21%

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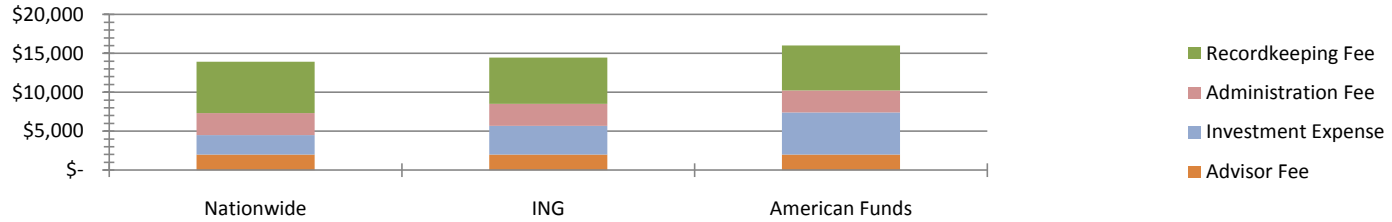
Assumes 10% growth in assets, 5% growth in number of plan participants and eligible employees and 5% growth in annual contributions

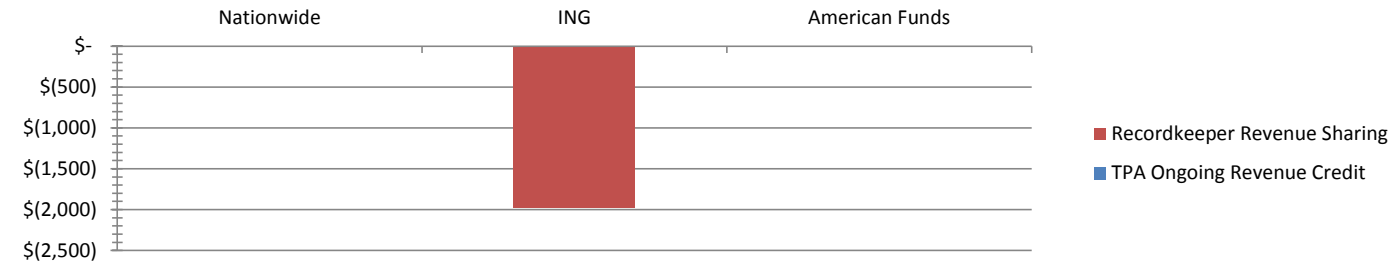
Gross Plan Expenses (Estimated Second Year)

Total gross expenses reflected as a dollar amount



Credits (Estimated Second Year)

Inclusive of ERISA offset credits by the recordkeeper and/or TPA



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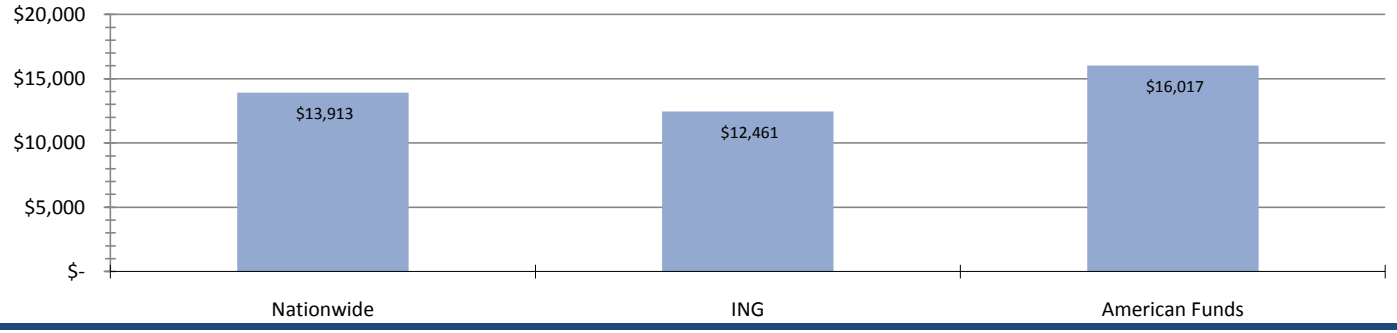
Assumes 10% growth in assets, 5% growth in number of plan participants and eligible employees and 5% growth in annual contributions

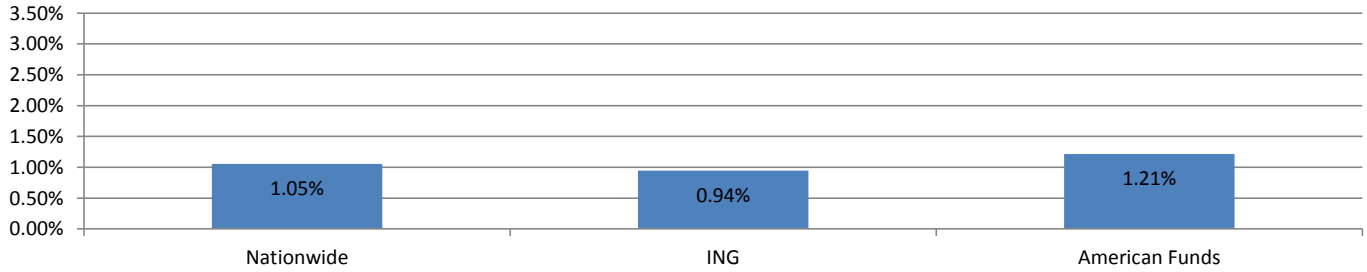
Net Plan Expenses (Estimated Second Year)

Total Net Expenses reflected as a dollar amount and reflects gross expenses less ERISA Credits



Net Plan Expense as a Percentage of Assets (Estimated Second Year)

Total Net Expenses reflected as a dollar amount as a percentage of assets and inclusive of any ERISA account offsets



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Product Summary

	Nationwide	ING	American Funds
Platform & Administration			
Product Name	Flexible Advantage	MAP Select	Recorkeeper Direct
Product Type	Open Arch. Mutual Fund	Group Funding Agreement	Mutual Fund
BD or RIA channel	RIA	Either	Either
Assets Under Administration	$76 B	$254 B	$37+ B
Number of Plans Administered	44,641	52,162	34,683
Bundled or Unbundled Arrangement	Either	Either	Unbundled
Investments			
Number of Available Investment Options	900+	300+	32
Proprietary Fund Requirement	None	None	Sole American Fund Line-up
Additional Cost to Use Non-Provider Funds	None	None	N/A
Lifestyle and Target Maturity Options	Both	Both	Either
Advisor Directed Portfolios Available	Yes	Yes	Yes
3(21) Directed Portfolios	Yes	Yes	Yes
3(38) Directed Portfolios	Yes	Yes	Yes
Directed Trustee Services	Yes	Yes	Yes
FDIC Insured Option	None	None	None
Fixed Income, SDBA			
Fixed Account/GIC/Stable Value Fund	Yes-Fixed Acc./Optional	Yes/Optional	Yes-Money Market/Optional
If Selected, Is Proprietary Option Required?	Yes (Fixed Select)	N/A	None
Fixed Account Liquid At Participant Level	Yes	N/A	No Fixed Account
Self Directed Brokerage	Yes	Yes	Yes
Mutual Fund Window	Yes	None	None
Level Compensation on Money Market, Self-Directed Brokerage, Fixed Account	Yes	N/A	No comp on MM

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Product Summary

	Nationwide	ING	American Funds
Living Benefit Option			
In Plan Annuity or Guaranteed Minimum Withdrawal Benefit	None	Yes	None
Loans			
Investment Charge Applies to Loaned Balances	None	Yes	Yes-$85 set-up, $50 annual
Auto Features			
Online Enollment Option	Yes	Yes	Yes
Auto Enrollment Available	Yes	Yes	Yes
Auto Increasing Deferrals Available	Yes	Yes	N/A
Education			
Enrollment and Education Meetings/Charge	Yes/None	Yes/None	Yes/None
Customized Employee Website	Yes/Optional	Yes/Optional	No
Materials			
Customized Employee Communication	Yes/Optional	Yes/Optional	Yes/Optional
Fiduciary Services			
Integrated Third Party 3(38) Solution	Yes	Yes	Yes
If Yes, Who Provides Services?	Iron Financial	Morningstar	Wilshire & Associates
Integrated Third Party 3(21) Solution	None	Yes	Yes
If Yes, Who Provides Services?	-	Morningstar	Wilshire & Associates
Provider Company			
Company Structure	Mutual	Public	Private

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Exhibit 5b

CIFC 401(K) SAVINGS PLAN

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CIFC 401(K) SAVINGS PLAN

THIS AGREEMENT, hereby made and entered into this _____ day of _____, 20_____ by and between CIFC Asset Management LLC (herein referred to as the "Employer") and Stephen Vaccaro, Rahul Agarwal and Robert Milton (herein referred to as the "Trustee").

W I T N E S S E T H:

WHEREAS, the Employer desires to recognize the contribution made to its successful operation by its Employees and to reward such contribution by means of a 401(k) Profit Sharing Plan for those Employees who qualify as Participants hereunder;

NOW, THEREFORE, effective January 1, 2014, (hereinafter called the "Effective Date"), the Employer hereby establishes a 401(k) Profit Sharing Plan and creates this trust (which plan and trust are hereinafter called the "Plan") for the exclusive benefit of the Participants and their Beneficiaries, and the Trustee hereby accepts the Plan on the following terms:

ARTICLE I
DEFINITIONS

1.1 **"Account"** means any separate notational account established and maintained by the Administrator for each Participant under the Plan. The term "Participant's Account" or "Participant's Account Balance" generally means the sum of all Accounts being maintained for the Participant, which represents the Participant's total interest in the Plan. Section 6.8 contains a definition of "Participant's Account Balance" for purposes of that Section. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

(a) the Elective Deferral Account that shall consist of the sub-Accounts listed below. Unless specifically stated otherwise, any reference to a Participant's Elective Deferral Account will refer to both of these sub-Accounts

(1) the Pre-Tax Elective Deferral Account

(2) the Roth Elective Deferral Account

(b) the Matching Contribution Account

(c) the Nonelective Contribution Account

(d) the Qualified Matching Contribution Account

(e) the Qualified Nonelective Contribution Account

(f) the Rollover Account

(g) the Transfer Account

(h) any other account, including an overlapping account or sub-account, necessary for the administration of the Plan

1.2 **"ACP"** means the actual contribution percentage that is equal to, for a specific group of Participants (either Highly Compensated Employees or Nonhighly Compensated Employees) for a Plan Year, the average of the ACRs (calculated separately for each Participant in such group). The ACP for each group shall be calculated to the nearest one-hundredth of one percent.

For purposes of computing an ACP, a Participant is an Eligible Employee who is eligible to have Matching Contributions or Qualified Matching Contributions (whether or not a deferral election was made or suspended pursuant to Section 4.2(e)) allocated to such Participant's Matching Contribution Account or Qualified Matching Contribution Account for a "specific Plan Year". In addition, if an Employee contribution is required as a condition of participation in the Plan, any Employee who would be a Participant in the Plan if such Employee made such a contribution shall be treated (for purposes of the ACP test) as an eligible Participant on behalf of whom no Employee contributions are made. However, if a Participant has no 414(s) Compensation for the Plan Year, then such Participant shall be disregarded for purposes of calculating the ACP of a group.

For purposes of the above paragraph, the term "specific Plan Year" means, for Participants who are Highly Compensated Employees, the Plan Year being tested. If the current year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year being tested. If the prior year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year prior to the Plan Year being tested.

1.3 **"ACP Test"** means the actual contribution percentage test determined pursuant to Section 4.7.

1.4 **"ACR"** means the actual contribution ratio of each Participant, that is a ratio (expressed as a percentage) equal to (1) the Contribution Percentage Amounts of such Participant for such Plan Year, to (2) such Participant's 414(s) Compensation for such Plan Year.

Matching Contributions, Qualified Matching Contributions and Qualified Nonelective Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the date after the close of the Plan Year.

The ACR for each Participant shall be calculated to the nearest one-hundredth of one percent.

1.5 **"Act"** means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.6 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer. "Administrator" also includes any Qualified Termination Administrator (QTA) that has assumed the responsibilities of the Administrator in accordance with guidelines set forth by the Department of Labor.

1.7 **"ADP"** means the actual deferral percentage that is equal to, for a specific group of Participants (either Highly Compensated Employees or Nonhighly Compensated Employees) for a Plan Year, the average of the ADRs (calculated separately for each Participant in such group). The ADP for each group shall be calculated to the nearest one-hundredth of one percent.

For purposes of computing an ADP, a Participant is an Eligible Employee who is eligible to make Elective Deferrals pursuant to Section 4.2 (whether or not a deferral election was made or suspended pursuant to Section 4.2(e)) allocated to the Participant's Elective Deferral Account for a "specific Plan Year." However, if a Participant has no 414(s) Compensation for the Plan Year, then such Participant shall be disregarded for purposes of calculating the ADP of a group.

For purposes of the above paragraph, the term "specific Plan Year" means, for Participants who are Highly Compensated Employees, the Plan Year being tested. If the current year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year being tested. If the prior year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year prior to the Plan Year being tested.

1.8 **"ADP Test"** means the actual deferral percentage test determined pursuant to Section 4.5.

1.9 **"ADR"** means the actual deferral ratio of each Participant, that is a ratio (expressed as a percentage) equal to (1) the amount of Employer contributions actually paid over to the Plan on behalf of such Participant for such Plan Year, to (2) such Participant's 414(s) Compensation for such Plan Year.

For purposes of this definition of ADR, Employer contributions actually paid over to the Plan on behalf of any Participant shall include: (a) any Elective Deferrals (other than Catch-Up Contributions) made pursuant to the Participant's deferral election (including Excess Deferrals of any Highly Compensated Employee), but excluding (1) Excess Deferrals of any Nonhighly Compensated Employee that arise solely from Elective Deferrals made under this Plan or any other plans maintained by the Employer, and (2) Elective Deferrals that are taken into account in the ACP Test set forth in Section 4.7 (provided that the ADP Test is satisfied both with and without the exclusion of these Elective Deferrals); and (b) at the election of the Employer, Qualified Nonelective Contributions and Qualified Matching Contributions to the extent such contributions are not used to satisfy the ACP Test, as well as any contributions authorized by (and to the extent prescribed by) Section 4.6(c).

For purposes of computing a Participant's ADR, an Eligible Employee who would be a Participant but for the failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

The ADR for each Participant shall be calculated to the nearest one-hundredth of one percent.

1.10 **"Affiliated Employer"** means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

1.11 **"Anniversary Date"** means the last day of the Plan Year.

1.12 **"Annual Additions"** means, for purposes of applying the limitations of Code Section 415, the sum credited to a Participant's Accounts for any Limitation Year of (1) Employer contributions, (2) Employee contributions, (3) forfeitures, (4) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2) which is part of a pension or annuity plan maintained by the Employer, (5) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit plan (as defined in Code Section 419(e)) maintained by the Employer and (6) allocations under a simplified employee pension plan.

Annual Additions do not include the transfers of funds from one plan to another. In addition, the following are not Annual Additions for the purposes of this definition: (1) rollover contributions as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16); (2) repayments of loans made to a Participant from the Plan; (3) repayment of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash-outs); (4) repayment of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); (5) Catch-Up Contributions and (6) employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

1.13 **"Beneficiary"** means the person (or entity) to whom the share of a deceased Participant's interest in the Plan is payable. Section 6.8 contains a definition of "designated Beneficiary" for purposes of that Section.

1.14 **"Catch-Up Contribution"** means, effective January 1, 2014, Elective Deferrals made to the Plan by a Catch-Up Eligible Participant during any taxable year of such Participant that are in excess of:

(a) a statutory dollar limit on Elective Deferrals or Annual Additions as provided in Code Sections 401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (without regard to Code Section 457(b)(3)), as applicable;

(b) a Plan limit on Elective Deferrals which is not a limit provided in (a) above; or

(c) the limit imposed by the ADP Test under Code Section 401(k)(3), in which Excess Contributions would otherwise be distributed pursuant to Section 4.6(b) to a Highly Compensated Employee who is a Catch-Up Eligible Participant.

Catch-Up Contributions for a Participant for a Participant's taxable year may not exceed the dollar limit on Catch-Up Contributions under Code Section 414(v)(2)(B)(i) for the Participant's taxable year. The dollar limit on Catch-Up Contributions under 414(v)(2)(B)(i) is $1,000 for taxable years beginning in 2002, increasing by $1,000 for each year thereafter up to $5,000 for taxable years beginning in 2006 and later years. After 2006, the $5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 414(v)(2)(C). Any such adjustments will be in multiples of $500.

1.15 **"Catch-Up Eligible Participant"** means, effective January 1, 2014, a Participant who:

(a) is eligible to defer Compensation pursuant to Section 4.2; and

(b) will attain age 50 or over by the end of the Participant's taxable year.

1.16 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.17 **"Compensation"** means, with respect to any Participant and except as otherwise provided herein, such Participant's wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Regulation 1.62-2(c)) for a Plan Year (the "determination period"). Compensation for any Self-Employed Individual shall be equal to such individual's Earned Income.

Compensation shall exclude (a)(1) contributions made by the Employer to a plan of deferred compensation to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (2) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (3) any distributions from a plan of deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

For purposes of this Section, the determination of Compensation shall be made by:

(a) including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions. For this purpose, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) including pre-participation Compensation paid during the Plan Year while not a Participant in the component of the Plan for which Compensation is being used.

(c) excluding Post-Severance Compensation.

Compensation in excess of $200,000 (or such other amount provided in the Code) shall be disregarded for all purposes other than for purposes of salary deferral elections pursuant to Section 4.2. Such amount shall be adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any "determination period" of less than twelve (12) months, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the "determination period" begins multiplied by the ratio obtained by dividing the number of full months in the short "determination period" by twelve (12). A "determination period" is not less than twelve (12) months solely because a Participant's Compensation does not include Compensation paid during a "determination period" while the Participant was not a Participant in the Plan (or a component of the Plan).

If any Employees are excluded from the Plan (or from any component of the Plan), then Compensation for any such Employees who become eligible or cease to be eligible to participate in the Plan (or in the component of the Plan) during a Plan Year shall only include Compensation while such Employees are Eligible Employees of the Plan (or of such component of the Plan).

For purposes of this Section, if the Plan is a plan described in Code Section 413(c) or 414(f) (a plan maintained by more than one Employer), the limitation applies separately with respect to the Compensation of any Participant from each Employer maintaining the Plan.

1.18 **"Contract" or "Policy"** means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.19 **"Contribution Percentage Amounts"** means the sum of any Matching Contributions which are made pursuant to Section 4.1(b); Qualified Matching Contributions (to the extent such Qualified Matching Contributions are not used to satisfy the ADP Test) and Qualified Nonelective Contributions (to the extent not used to satisfy the ADP Test), as well as any contributions authorized by (and to the extent prescribed by) Section 4.8(g). In addition, Contribution Percentage Amounts may include Elective Deferrals, provided the ADP Test is met before the Elective Deferrals are used in the ACP Test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP Test. However, Contribution Percentage Amounts shall not include Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or due to Code Section 401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions.

1.20 **"Custodian"** means a person or entity that has custody of all or any portion of the Plan assets.

1.21 **"Directed Account"** means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

1.22 **"Disability"** means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders such Participant incapable of continuing any gainful occupation and which condition constitutes total disability under the federal Social Security Acts.

1.23 **"Early Retirement Date."** This Plan does not provide for a retirement date prior to Normal Retirement Date.

1.24 **"Earned Income"** means with respect to a Self-Employed Individual, the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Self-Employed Individual to a qualified Plan to the extent deductible under Code Section 404. In addition, net earnings shall be determined with regard to the deduction allowed to the Self-Employed Individual by Code Section 164(f).

If any combination of bonuses, commissions, tips, overtime, moving expenses, fringe benefits, or any other element of compensation is excluded from Compensation for the purpose of determining any contribution, then for the purpose of determining the amount of such contribution on behalf of any Self-Employed Individual, such person's Earned Income will be reduced in the same proportion that the "includible compensation" of "common law participants" bears to the "total compensation" of all "common law participants."

For purposes of the preceding paragraph, "common law participant" means a Participant who is neither a Highly Compensated Employee nor a Self-Employed Individual, "includible compensation" means the amount of Compensation taken into account in determining the amount of such contribution for "common law participants," and "total compensation" means the amount of Compensation that would have been taken into account in determining such contribution for "common law participants" if (1) no element of Compensation had been excluded in determining such contribution, and (2) all of the following are included in Compensation: any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

However, to the extent that the amount of "includible compensation" for "common law participants" includes any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions, then those amounts shall be added back to Earned Income after making the adjustment described in the preceding paragraph.

1.25 **"Elective Deferral"** means any Employer contributions made to the Plan at the election of the Participant in lieu of cash Compensation pursuant to Section 4.2. With respect to any taxable year, a Participant's Elective Deferrals is the sum of all employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement ("CODA") described in Code Section 401(k), any salary reduction simplified employee pension described in Code Section 408(k)(6), any SIMPLE IRA plan described in Code Section 408(p) and any plan described under Code Section 501(c)(18), and any employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and Roth Elective Deferrals. Elective Deferrals shall not include any deferrals properly distributed as excess Annual Additions pursuant to Section 4.10(a).

1.26 **"Elective Deferral Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Elective Deferrals. Amounts in the Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(d). The Elective Deferral Account may consist of a Pre-Tax Elective Deferral Account and a Roth Elective Deferral Account. Unless specifically stated otherwise, any reference to a Participant's Elective Deferral Account will refer to both of these sub-Accounts.

1.27 **"Eligible Employee"** means any Employee, except as provided below, and except as provided in any other particular provision for the limited purposes of that provision (e.g., ADP test). The following Employees shall not be eligible to participate in this Plan:

(a) Employees of Affiliated Employers, unless such Affiliated Employers have specifically adopted this Plan in writing.

(b) An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out-sourced workers, are neither Employees nor Eligible Employees, and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. However, this paragraph shall not apply to partners or other Self-Employed Individuals unless the Employer treats them as independent contractors.

(c) Unless or until otherwise provided, Employees who became Employees as the result of a "Code Section 410(b)(6)(C) transaction" will not be Eligible Employees until the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A Code Section 410(b)(6)(C) transaction is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business that is subject to the special rules set forth in Code Section 410(b)(6)(C).

(d) Employees who are Leased Employees.

(e) Employees whose employment is governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code Section 7701(a)(46)) and the Employer under which retirement benefits were the subject of good faith bargaining between the parties, unless such agreement expressly provides for coverage in this Plan.

(f) Employees who are nonresident aliens (within the meaning of Code Section 7701(b)(1)(B)) and who receive no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)).

1.28 **"Employee"** means any common law employee, Self-Employed Individual, Leased Employee or other person to the extent that the Code treats such an individual as an employee of the Employer for purposes of the Plan, such as (for certain purposes) any person who is employed by an Affiliated Employer.

1.29 **"Employer"** means CIFC Asset Management LLC and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a company, with principal offices in the State of New York. In addition, where appropriate, the term Employer shall include any Participating Employer.

1.30 **"Excess Aggregate Contributions"** means, with respect to any Plan Year, the excess of:

(a) The aggregate Contribution Percentage Amounts actually made on behalf of Participants who are Highly Compensated Employees for such Plan Year and taken into account in computing the numerator of the ACR, over

(b) The maximum Contribution Percentage Amounts permitted by the ACP Test of Section 4.7(a) (determined by hypothetically reducing contributions made on behalf of Participants who are Highly Compensated Employees in order of their ACRs beginning with the highest of such ACRs).

Such determination shall be made after first taking into account corrections of any Excess Deferrals pursuant to Section 4.2 and then taking into account any adjustments of any Excess Contributions pursuant to Section 4.6.

1.31 **"Excess Contributions"** means, with respect to a Plan Year, the excess of Elective Deferrals made on behalf of Participants who are Highly Compensated Employees for the Plan Year over the maximum amount of such contributions permitted under Section 4.5(a) (determined by hypothetically reducing contributions made on behalf of Participants who are Highly Compensated Employees in order of the ADRs beginning with the highest of such ADRs). Excess Contributions shall be treated as an Annual Addition pursuant to Section 1.12.

1.32 **"Excess Deferrals"** shall mean those Elective Deferrals of a Participant that either (1) are made during the Participant's taxable year and which exceed the dollar limitation under Code Section 402(g) (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code Section 414(v)) for such year; or (2) are made during a calendar year and exceed the dollar limitation under Code Section 402(g) (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code Section 414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer.

1.33 **"Fiduciary"** means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.34 **"Fiscal Year"** means the Employer's accounting year of 12 months commencing on January 1st of each year and ending the following December 31st.

1.35 **"Forfeiture"** means that portion of a Participant's Account that is not Vested, and which becomes a Forfeiture at the time described below:

The earlier of:

(a) the distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero (determined without regard to the Participant's Qualified Voluntary Employee Contribution Account or Rollover Account), then such Participant shall be deemed to have received a distribution of such Vested benefit as of the date on which the severance of employment occurs, or

(b) the last day of the Plan Year in which a Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service.

In addition, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provisions of this Plan.

Regardless of the preceding provisions, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the subsequent Plan Year.

For purposes of this Plan, any Forfeiture will be disposed of in the Plan Year following the Plan Year in which the Forfeiture arises.

1.36 **"Former Employee"** means an Employee who had a severance from employment with the Employer or an Affiliated Employer.

1.37 **"415 Compensation"** with respect to any Participant means such Participant's wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Regulation 1.62-2(c)) for a Plan Year. 415 Compensation for any Self-Employed Individual shall be equal to such individual's Earned Income.

415 Compensation shall exclude (a)(1) contributions made by the Employer to a plan of deferred compensation to the extent that, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (2) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (3) any distributions from a plan of deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

Notwithstanding the above, the determination of 415 Compensation shall be made by:

(a) including any Elective Deferrals, and any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions. For this purpose, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) including Post-Severance Compensation.

1.38 **"414(s) Compensation"** means 415 Compensation or any other definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.39 **"Highly Compensated Employee"** means an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

(a) was a "five percent owner" as defined in Section 1.44(b) at any time during the "determination year" or the "look-back year"; or

(b) for the "look-back year" had 415 Compensation from the Employer in excess of $80,000. The $80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

The "determination year" means the Plan Year for which testing is being performed, and the "look-back year" means the immediately preceding twelve (12) month period.

In determining who is a Highly Compensated Employee, Employees who are nonresident aliens and who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. If an Employee who is a nonresident alien has U.S. source income, that Employee is treated as satisfying this definition if all of such Employee's U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty. Additionally, all Affiliated Employers shall be taken into account as a single employer

and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

1.40 **"Highly Compensated Participant"** means, for a particular Plan Year, a Participant who meets the definition of a Highly Compensated Employee in effect for that Plan Year.

1.41 **"Hour of Service"** means (1) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer for the performance of duties (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation 2530.200b-2, which is incorporated herein by reference); (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

For purposes of this Section, Hours of Service will be credited for employment with any Affiliated Employers. The provisions of Department of Labor regulations 2530.200b-2(b) and (c) are incorporated herein by reference.

1.42 **"Income"** means the gains or losses for the "applicable computation period" allocable to an "excess amount", which amount shall be determined and allocated, at the discretion of the Administrator, using any of the methods set forth below:

(a) Method of allocating Income. The Administrator may use any reasonable method for computing the Income allocable to an "excess amount" for the "applicable computation period," provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the "applicable computation period," and is used by the Plan for allocating earnings to a Participant's "specific account(s)."

(b) Alternative method of allocating Income. The Administrator may allocate Income to an "excess amount" for the "applicable computation period" by multiplying the earnings for the "applicable computation period" allocable to the "Employer contributions" taken into account under the test or limitation giving rise to such "excess amount" by a fraction, the numerator of which is the "excess amount" for the Employee for the "applicable computation period," and the denominator of which is the sum of:

(1) The "specific account(s)" balance(s) taken into account under the test or limitation giving rise to such "excess amount" as of the beginning of the "applicable computation period," and

(2) Any additional amount of such "Employer contributions" made for the "applicable computation period" to the "specific account(s)."

(c) For purposes of calculating the Income attributable to Excess Deferrals of Section 4.2(g), the terms "applicable computation period", "Employer contributions", "excess amount", and "specific account(s)" will have the following substitutions:

(1) The taxable year of the Participant shall be substituted for the "applicable computation period";

(2) Elective Deferrals shall be substituted for "Employer contributions";

(3) Excess Deferrals shall be substituted for "excess amount"; and

(4) The Elective Deferral Account shall be substituted for the "specific account(s)."

(d) For purposes of calculating the Income attributable to Excess Contributions of Section 4.6(b), the terms "applicable computation period", "Employer contributions", "excess amount", and "specific account(s)" will have the following substitutions:

(1) The Plan Year shall be substituted for the "applicable computation period";

(2) Elective Deferrals, and other contributions included in determining the ADR under Section 1.9, shall be substituted for "Employer contributions";

(3) Excess Contributions shall be substituted for "excess amount";

(4) The Elective Deferral Account, and, if included in the determination of the ADR under Section 1.9, the Qualified Matching Contribution and/or the Qualified Nonelective Contribution Account(s), shall be substituted for the "specific account(s)."

(e) For purposes of calculating the Income attributable to Excess Aggregate Contributions of Section 4.8(b), the terms "applicable computation period", "Employer contributions", "excess amount", and "specific account(s)" will have the following substitutions:

(1) The Plan Year shall be substituted for the "applicable computation period";

(2) Any Matching Contributions which are made pursuant to Section 4.1(b); Qualified Matching Contributions (to the extent such Qualified Matching Contributions are not used to satisfy the ADP Test) and Qualified Nonelective Contributions (to the extent not used to satisfy the ADP Test) shall be substituted for "Employer contributions." Elective Deferrals may be included in the substitution listed above, provided the ADP Test is met before the Elective Deferrals are used in the ACP Test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP Test. However, Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or due to Code Section 401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions shall not be included in the substitution listed above.

(3) Excess Aggregate Contributions shall be substituted for "excess amount";

(4) The Matching Contribution Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account shall be substituted for the "specific account(s)."

(f) With respect to Excess Contributions and Excess Aggregate Contributions, Income for the period between the end of the Plan Year and the date of the distribution (the "gap period") is required to be distributed. A Plan will not fail to use a reasonable method for computing the Income that is allocable to Excess Contributions and Excess Aggregate Contributions merely because the Income allocable to Excess Contributions and Excess Aggregate Contributions is determined on a date that is no more than 7 days before the distribution. Income for the "gap period" shall be calculated by using any of the methods set forth below:

(1) Safe harbor method of allocating "gap period" income. The Administrator may use the safe harbor method in this paragraph to determine the Income on Excess Contributions and Excess Aggregate Contributions for the "gap period." Under this safe harbor method, Income on Excess Contributions and Excess Aggregate Contributions for the "gap period" is equal to 10% of the Income allocable to Excess Contributions and Excess Aggregate Contributions for the Plan Year that would be determined under paragraph (b) above (with the appropriate substitutions of paragraph (d) and paragraph (e)), multiplied by the number of calendar months that have elapsed since the end of the Plan Year. For purposes of calculating the number of calendar months that have elapsed under this safe harbor method, a corrective distribution that is made on or before the fifteenth day of a month is treated as made on the last day of the preceding month and a distribution made after the fifteenth day of a month is treated as made on the last day of the month.

(2) Alternative method for allocating Plan Year and "gap period" income. The Administrator may determine the allocable Income for the aggregate of the Plan Year and the "gap period" by applying the alternative method provided by paragraph (b) above with respect to the entire period represented by the Plan Year and the "gap period", rather than just the Plan Year.

1.43 **"Investment Manager"** means any Fiduciary described in Act Section 3(38).

1.44 **"Key Employee"** means an Employee as defined in Code Section 416(i) and the Regulations thereunder. Generally, any Employee or Former Employee (as well as each of the Employee's or Former Employee's Beneficiaries) is considered a Key Employee if the Employee or Former Employee, at any time during the Plan Year that contains the "determination date" is described in one of the following categories:

(a) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416) having annual 415 Compensation greater than $130,000 (as adjusted under Code Section 416(i)(1)).

(b) a "five percent owner" of the Employer. "Five percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 318) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers.

(c) a "one percent owner" of the Employer having an annual 415 Compensation from the Employer of more than $150,000. "One percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 318) more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. However, in determining whether an individual has 415 Compensation of more than $150,000, 415 Compensation from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account.

In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. In determining whether an individual has 415 Compensation of more than $150,000, 415 Compensation from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account.

1.45 **"Late Retirement Date"** means the first day of the month coinciding with or next following a Participant's actual Retirement Date after having reached Normal Retirement Date.

1.46 **"Leased Employee"** means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated work force.

1.47 **"Limitation Year"** means the Plan Year. However, the Employer may elect a different Limitation Year by amending the Plan. All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the initial Plan Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.48 **"Matching Contribution"** means any Employer contribution (including a contribution made at the Employer's discretion) to the Plan on account of a Participant's Elective Deferrals.

1.49 **"Matching Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Matching Contributions. However, if Matching Contributions are Qualified Matching Contributions, then such Qualified Matching Contributions shall be allocated to the Qualified Matching Contribution Account.

1.50 **"Nonelective Contribution"** means any Employer contribution (including a contribution made at the Employer's discretion) to the Plan, other than a Participant's Elective Deferrals, Matching Contributions, Qualified Matching Contributions and Qualified Nonelective Contributions.

1.51 **"Nonelective Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Nonelective Contributions.

1.52 **"Nonhighly Compensated Employee/Participant"** means any Employee who is not a Highly Compensated Employee. However, for purposes of Section 4.5(a) and Section 4.7(a), if the prior year testing method is used, a Nonhighly Compensated Employee shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year. A Nonhighly Compensated Participant is a Participant who is not a Highly Compensated Employee.

A Participant is a Nonhighly Compensated Participant for a particular Plan Year if such Participant does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

1.53 **"Non-Key Employee"** means any Employee or Former Employee (and such Employee's or Former Employee's Beneficiaries) who is not a Key Employee.

1.54 **"Normal Retirement Age"** means the Participant's 65th birthday, or the Participant's 5th anniversary of joining the Plan, if later. A Participant shall become fully Vested in the Participant's Account upon attaining Normal Retirement Age (if the Participant is still employed by the Employer on or after that date). However, solely for purposes of nondiscrimination testing under Code Section 401(a)(4), the Employer may deem the Social Security retirement age (as defined in Code Section 415(b)(8)) as the Normal Retirement Age.

1.55 **"Normal Retirement Date"** means the first day of the month coinciding with or next following the Participant's Normal Retirement Age.

1.56 **"1-Year Break in Service"** means a Period of Severance of at least 12 consecutive months.

1.57 **"Owner-Employee"** means a sole proprietor who owns the entire interest in the Employer or a partner (or member in the case of a limited liability company treated as a partnership or sole proprietorship for federal income tax purposes) who owns more than 10% of either the capital interest or the profits interest in the Employer and who receives income for personal services from the Employer.

1.58 **"Participant"** means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was

a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the Participant has an Account Balance in the Plan).

1.59 **"Participant Direction Procedures"** means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.13 and observed by the Administrator and applied to Participants who have Participant Directed Accounts.

1.60 **"Participating Employer"** means an Employer who adopts the Plan pursuant to Section 11.1.

1.61 **"Period of Service"** means each twelve (12) month period of service commencing with the Employee's first day of employment or reemployment with the Employer or Affiliated Employer and ending on the date a 1-Year Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit for all such Periods of Severance. Fractional periods of a year will be expressed in terms of days. A Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, and whether or not such service is actual service or imputed service (under the service-spanning rule above), expressed in the number of whole years represented by such sum.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized.

In the event the method of crediting service is amended from the hour-of-service method to the elapsed-time method, an Employee will receive credit for a Period of Service consisting of:

(a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and

(b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed-time method for service during the entire computation period in which the amendment occurs or (2) the service taken into account under the hour-of-service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the amendment occurs.

1.62 **"Period of Severance"** means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a 1-Year Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.63 **"Plan"** means this instrument, including all amendments thereto.

1.64 **"Plan Year"** means the Plan's accounting year of twelve (12) months commencing on January 1st of each year and ending the following December 31st.

1.65 **"Post-Severance Compensation"** means payments made within 2 1/2 months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

1.66 **"Pre-Tax Elective Deferral Account"** means the portion of a Participant's Elective Deferral Account that is attributable to Pre-Tax Elective Deferrals.

1.67 **"Pre-Tax Elective Deferrals"** means a Participant's Elective Deferrals that are not includible in the Participant's gross income at the time deferred.

1.68 **"Qualified Matching Contribution"** means any Employer contribution (including a contribution made at the Employer's discretion) to the Plan on account of a Participant's Elective Deferrals that are designated as such pursuant to Sections 4.6 and 4.8.

1.69 **"Qualified Matching Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Qualified Matching Contributions. Amounts in the Qualified Matching Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(d).

1.70 **"Qualified Nonelective Contribution"** means any Employer contributions to the Plan that are designated as such pursuant to Sections 4.6 and 4.8 or any other provision of the Plan. Qualified Nonelective Contributions may be used to satisfy the ADP Test or the ACP Test. All such contributions shall be allocated to the Qualified Nonelective Contribution Account, and shall be fully vested and subject to the restrictions on distributions from that Account.

1.71 **"Qualified Nonelective Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Qualified Nonelective Contributions. Amounts in the Qualified Nonelective Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(d).

1.72 **"Regulation"** means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.73 **"Retirement Date"** means the date as of which a Participant retires for reasons other than Disability, whether such retirement occurs on a Participant's Normal Retirement Date or Late Retirement Date.

1.74 **"Rollover Account"** means the separate account established and maintained by the Administrator for each Participant with respect to such Participant's interest in the Plan resulting from amounts that are rolled over from another plan or Individual Retirement Account in accordance with Section 4.12. Amounts in the Rollover Account are nonforfeitable when made.

A separate accounting shall be maintained with respect to any portion of the Rollover Account that is attributable to amounts treated as Roth elective deferrals.

1.75 **"Roth Elective Deferral Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Roth Elective Deferrals. Amounts in the Roth Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(d).

1.76 **"Roth Elective Deferrals"** means a Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her deferral election.

1.77 **"Self-Employed Individual"** means an individual, other than an independent contractor, who has Earned Income for the taxable year from the trade or business for which the Plan is established, and, also, an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year. A Self-Employed Individual shall be treated as an Employee.

1.78 **"Shareholder-Employee"** means a Participant who owns more than five percent (5%) of the Employer's outstanding capital stock during any year in which the Employer elected to be taxed as a Small Business Corporation under the applicable Code Section.

1.79 **"Terminated Participant"** means a person who has been a Participant, but whose employment has been terminated other than by death, Disability or retirement.

1.80 **"Top-Heavy Plan"** means a plan described in Section 9.1(a).

1.81 **"Top-Heavy Plan Year"** means a Plan Year during which the Plan is a Top-Heavy Plan.

1.82 **"Total Vested Benefit"** means the total Participant's Vested Account balances derived from Employer and Employee contributions, including rollover contributions, whether Vested before or upon death, including the proceeds of insurance contracts.

1.83 **"Transfer Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.11. To the extent that the Plan is a direct or indirect transferee of a defined benefit or defined contribution pension plan, then the funds transferred to this Plan from such other plan shall be treated as funds that are subject to a life annuity form of payment as well as the survivor annuity requirements of Code Sections 401(a)(11) and 417 (and are part of the Participant's Pre-Retirement Survivor Annuity Account). The preceding sentence does not apply to amounts rolled over into a Participant's Rollover Account, even if from a pension plan.

1.84 **"Trustee"** means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors, effective upon the written acceptance of such person or entity to serve as Trustee.

1.85 **"Trust Fund"** means the assets of the Plan and Trust as the same shall exist from time to time.

1.86 **"Valuation Date"** means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants' Accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, is open for business. Nothing in this Plan requires or implies a uniform Valuation Date for all Accounts; thus certain valuation provisions that apply to an Account that is not valued on each business day will have no application, in operation, to an Account that is valued on each business day.

1.87 **"Vested"** means the nonforfeitable portion of any account maintained on behalf of a Participant.

For vesting purposes, the computation periods shall be the Plan Year, including periods prior to the Effective Date of the Plan.

ARTICLE II
ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Act, the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Appointment of Investment Manager.** The Employer may appoint, at its option, an Investment Manager (qualified under the Investment Company Act of 1940 as amended), investment adviser, or other agent to provide investment direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have authority to direct the investment.

(c) **Funding policy and method.** The Employer shall establish a funding policy and method, i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. The Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The communication of such a funding policy and method shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds. Such funding policy and method shall be consistent with the objectives of this Plan and with the requirements of Title I of the Act.

(d) **Review of fiduciary performance.** The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer shall be the Administrator. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is serving as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 401(a), and shall comply with the terms of the Act and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan.

The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

(a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;

(b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;

(c) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

(d) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;

(e) to maintain all necessary records for the administration of the Plan;

(f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;

(g) to determine the size and type of any Contract to be purchased from any insurer, and to designate the insurer from which such Contract shall be purchased;

(h) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;

(i) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion (if the Trustee has such discretion) in a manner designed to accomplish specific objectives;

(j) to prepare and implement a procedure to notify Eligible Employees that they may elect to have a portion of their Compensation deferred or paid to them in cash;

(k) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it; and

(l) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

2.6 APPOINTMENT OF ADVISERS

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

2.7 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator or the Trustee in carrying out the instructions of Participants as to the directed investment of their accounts (if permitted) and other specialists and their agents, the costs of any bonds required pursuant to Act Section 412, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). If liquid assets of the Plan are insufficient to cover the fees of the Trustee or the Plan Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.8 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits) after the application is filed, or such period as is required by applicable law or Department of Labor regulation. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

2.9 CLAIMS REVIEW PROCEDURE

Any Employee, Former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.8 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes

the claim should be allowed, shall be filed with the Administrator no later than sixty (60) days (45 days if the claim involves disability benefits) after receipt of the written notification provided for in Section 2.8. The Administrator shall then conduct a hearing within the next 60 days (45 days if the claim involves disability benefits), at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Administrator which are pertinent to the claim at issue and its disallowance. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days (45 days if the claim involves disability benefits) of receipt of the appeal (unless there has been an extension of sixty (60) days (45 days if the claim involves disability benefits) due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the 60-day period (45 days if the claim involves disability benefits)). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

If the Administrator, pursuant to the claims review procedure, makes a final written determination denying a Participant's or Beneficiary's benefit claim, then in order to preserve the claim, the Participant or Beneficiary must file an action with respect to the denied claim not later than one hundred eighty (180) days following the date of the Administrator's final determination.

ARTICLE III
ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

(a) **Eligibility.** For all Plan purposes, any Eligible Employee who has completed a 3 month Period of Service shall be eligible to participate hereunder as of the date such Employee has satisfied such requirements.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **Effective date of participation.** An Eligible Employee shall become a Participant effective as of the first day of the Plan Year quarter coinciding with or next following the date such Employee met the eligibility requirements of Section 3.1, provided said Employee was still employed as of such date (or if not employed on such date, as of the date of rehire if a 1-Year Break in Service has not occurred or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment).

(b) **Ineligible to eligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant in the Plan, shall go from a classification of an ineligible Employee to an Eligible Employee, such Employee shall become a Participant in the Plan on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(c) **Eligible to ineligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant in the Plan, shall go from a classification of an Eligible Employee to an ineligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs five (5) consecutive 1-Year Breaks in Service, eligibility will be determined under the Break in Service rules set forth in Section 3.5.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan and the Act. Such determination shall be subject to review pursuant to Section 2.9.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee with respect to the Plan, then such Participant shall continue to Vest in the Plan for each Period of Service completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund.

3.5 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) **Reemployed before five (5) consecutive 1-Year Breaks in Service.** If any Employee becomes a Former Employee due to severance from employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service occur, then the Former Employee's prior service shall count in the same manner as if severance from employment with the Employer had not occurred. If any Participant ceases to be a Participant due to severance from employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service occur, then the Participant shall resume participation (in the same manner as if severance from employment with the Employer had not occurred) as of the reemployment date.

(b) **Reemployed after five (5) consecutive 1-Year Breaks in Service ("rule of parity" provisions).** If any Employee becomes a Former Employee due to severance from employment with the Employer and is reemployed after a 5-Year Break in Service has occurred, Periods of Service shall include Periods of Service prior to the 5-year break in service subject to the following rules:

(1) **Rule of parity.** In the case of a Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Periods of Service before a period of consecutive 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of pre-break Periods of Service. Such aggregate number of Periods of Service will not include any Periods of Service disregarded under the preceding sentence by reason of prior period of five (5) consecutive 1-Year Breaks in Service.

(2) **Participation in Plan.** A Former Employee shall participate in the Plan as of the date of reemployment, or if later, as of the date that the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded in this subsection.

(c) **Vesting after five (5) consecutive 1-Year Breaks in Service.** After a Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of said Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer derived account balance in the Plan attributable to post-break service.

(d) **Buyback provisions.** If any Participant severs employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Participant had received a distribution of the entire Vested interest prior to reemployment, then the forfeited account shall be reinstated only if the Participant repays the full amount which had been distributed. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. In the event the Participant does repay the full amount distributed, the undistributed forfeited portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore any such forfeited Accounts provided, however, that if a discretionary contribution is made for such year pursuant to Section 4.1(d), such contribution will first be applied to restore any such Accounts and the remainder shall be allocated in accordance with the terms of the Plan.

If a non-Vested Participant was deemed to have received a distribution and such Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, then such Participant will be deemed to have repaid the deemed distribution as of the date of reemployment.

3.6 ELECTION NOT TO PARTICIPATE

(a) **Irrevocable election not to participate.** An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in every Qualified Plan maintained by the Employer. Such election must be made prior to the time the Employee first becomes eligible to participate under any Qualified Plan maintained by the Employer. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the date the Employee would have otherwise entered any Qualified Plan. "Qualified Plan" means, for purposes of this Section, a plan intended to be tax-qualified under Code Section 401(a).

(b) **Effect on coverage, ADP and ACP Tests.** An Employee who elected not to participate under the Plan is treated as a nonbenefiting Employee for purposes of the minimum coverage requirements under Code Section 410(b). Furthermore, such Employee is not a Participant for purposes of the ADP Test or the ACP Test.

3.7 OWNER-EMPLOYEE LIMITATION

If this Plan provides contributions or benefits for one or more Owner-Employees, the contributions on behalf of any Owner-Employee shall be made only with respect to the Earned Income for such Owner-Employee which is derived from the trade or business with respect to which such Plan is established.

3.8 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer shall apply the principles described by, and take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System.

ARTICLE IV
CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION

For each Plan Year, the Employer shall contribute to the Plan:

(a) **Salary reductions.** The amount that all Participants' Compensation was reduced pursuant to Section 4.2(a), which amount shall be Elective Deferrals.

(b) **Matching Contributions.** On behalf of each Participant who is eligible to share in Matching Contributions for the Plan Year, a discretionary Matching Contribution equal to a uniform percentage (to be determined each year by the Employer) of each such Participant's Elective Deferrals.

Matching Contributions shall be determined and any Compensation or dollar limitation used in determining such Matching Contributions shall be based on the Plan Year.

Catch-Up Contributions shall be subject to the Matching Contribution.

(c) **Qualified Nonelective Contribution.** On behalf of each Participant who is eligible to share in the Qualified Nonelective Contribution for the Plan Year, a discretionary Qualified Nonelective Contribution equal to a uniform percentage of each eligible individual's Compensation or 415 Compensation. Such Qualified Nonelective Contribution shall be allocated to the Qualified Nonelective Contribution Account.

(d) **Nonelective Contributions.** A discretionary amount to each Participant, which amount, if any, shall be a Nonelective Contribution. The Employer shall provide the Administrator with written notification of the amount of the contribution to be allocated to each Participant.

Gateway Contribution. In addition to any Nonelective Contribution described above, the Employer may make an additional Nonelective Contribution ("Gateway Contribution") in an amount necessary to satisfy the minimum allocation gateway requirement described in Section 4.4(b)(5).

(e) **Top-Heavy contribution.** Additionally, to the extent necessary, the Employer shall contribute to the Plan the amount necessary to provide the top-heavy minimum contribution, even if it exceeds the amount that would be deductible under Code Section 404.

(f) **Form of contribution.** All contributions by the Employer shall be made in cash or in such property as is acceptable to the Trustee.

4.2 PARTICIPANT'S SALARY REDUCTION ELECTION

(a) **Deferral elections.** Each Participant may elect to defer a portion of Compensation which would have been received in the Plan Year (except for the deferral election) by up to the maximum amount which will not cause the Plan to violate the provisions of Sections 4.5(a) and 4.9. A deferral election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election or, if later, the latest of the date the Employer adopts this cash or deferred arrangement, or the date such arrangement is first effective. For purposes of this Section, Compensation shall be determined prior to any reductions made pursuant to Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

Notwithstanding anything in this Plan to the contrary, the Employer may impose a minimum elective deferral percentage of 1% as an administrative procedure applied on a uniform and consistent basis to all Participants.

For purposes of this Section, the annual dollar limitation of Code Section 401(a)(17) ($200,000 as adjusted) shall not apply except that the Administrator may elect to apply such limit as part of the deferral election procedures established hereunder.

Roth Elective Deferrals. A Participant may elect to have all or a portion of the Participant's Elective Deferrals to be Roth Elective Deferrals when contributed to the Plan. These Roth Elective Deferrals are includible in the Participant's gross income at the time deferred and must be irrevocably designated as Roth Elective Deferrals by the Participant in the Deferral Election Agreement. Absent a Participant's affirmative election to have any portion of an Elective Deferral be considered a Roth Elective Deferral, Elective Deferrals shall be treated as Pre-Tax Elective Deferrals.

Deferral elections of bonuses. Additionally, each Participant may elect to defer up to 100% of any cash bonus to be paid by the Employer during the Plan Year. A deferral election may not be made with respect to cash bonuses that are currently available on or before the date the Participant executes such deferral election. However, if an opportunity to make a deferral election is given to a Participant with respect to a cash bonus but such Participant fails to make such a deferral election, then the Participant's bonus shall be subject to the deferral election (not to exceed 100% of the bonus) in effect on the day before the day that such Participant's bonus becomes currently available.

The amount that is deferred by a Participant shall be subject to the limitations of this Section, shall be an Elective Deferral, and shall be held for such Participant in the Elective Deferral Account.

(b) **Catch-Up Contributions.** Notwithstanding anything in the Plan to the contrary, each Catch-Up Eligible Participant shall be eligible to make Catch-Up Contributions during the Participant's taxable year in accordance with, and subject to the limitations of, Code Section 414(v). Such Catch-Up Contributions are not subject to the limits on Annual Additions under Code Section 415(c), are not counted in the ADP Test of Section 4.5(a), are not counted in determining the minimum allocation required in a Top-Heavy Plan during a Top-Heavy Plan Year under Code Section 416 (but Catch-Up Contributions made in prior years are counted in determining whether the Plan is a Top-Heavy Plan), and are not taken into account under the limit on Elective Deferrals under Code Section 402(g). Catch-Up Contributions may be a dollar amount or a percentage of Compensation for each payroll period not to exceed the applicable dollar limit under Code Section 414(v), pursuant to procedures established by the Administrator. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Section 401(k)(3), 416 or 410(b), as applicable, by reason of the making of such Catch-Up Contributions.

(c) **Full vesting.** Each Participant's Elective Deferral Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(d) **Distribution restrictions.** Notwithstanding anything in the Plan to the contrary, amounts (including any offset of loans) held in the Participant's Elective Deferral Account may not be distributed except as authorized by other provisions of this Plan, but in no event may such amounts be distributed earlier than:

(1) a Participant's death, disability or other severance of employment;

(2) a Participant's attainment of age 59 1/2;

(3) the termination of the Plan without the existence at the time of Plan termination of an alternative defined contribution plan or the establishment of an alternative defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution plan is not treated as an alternative defined contribution plan if the plan is an employee stock ownership plan (as defined in Code Section 4975(e)(7) or 409(a)), a simplified employee pension plan (as defined in Code Section 408(k)), a SIMPLE IRA plan (as defined in Code Section 408(p)), a plan or contract that satisfies the requirements of Code Section 403(b), or a plan that is described in Code Sections 457(b) or 457(f). Furthermore, if at all times during the 24-month period beginning 12 months before the date of the Plan's termination, fewer than 2% of the Participants in the Plan as of the date of Plan termination are eligible under the other defined contribution plan, then the other defined contribution plan is not an alternative defined contribution plan. Distributions from the terminating Plan may only be made in lump sum distributions, pursuant to and defined in Regulation 1.401(k)-1(d)(4)(ii);

(4) the proven financial hardship of a Participant, subject to the limitations of Section 6.12.

(e) **Suspension due to hardship.** In the event a Participant has received a hardship distribution pursuant to Regulation 1.401(k)-1(d)(3)(iv)(E)(2) from this Plan or any other plan maintained by the Employer, then such Participant shall not be permitted to elect to have Elective Deferrals contributed to the Plan for a period of six months following the receipt of the distribution.

(f) **Deferrals limited to Code Section 402(g) dollar limit.** A Participant's "elective deferrals" made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan during any calendar year shall not exceed the dollar limitation. For this purpose, "elective deferrals" means, with respect to a calendar year, the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code Section 401(k), any salary reduction simplified employee pension (as defined in Code Section 408(k)(6)), any SIMPLE IRA plan described in Code Section 408(p), any eligible deferred compensation plan under Code Section 457, any plans described under Code Section 501(c)(18), and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. "Elective deferrals" shall not include any deferrals properly distributed as excess "Annual Additions" pursuant to Section 4.9. "Dollar limitation" shall mean the dollar limitation contained in Code Section 402(g) in effect for the Participant's taxable year beginning in such calendar year. In the case of a participant aged 50 and over by the end of the taxable year, the "dollar limitation" described in the preceding sentence shall be adjusted to include the amount of Elective Deferrals that may be treated as Catch-Up Contributions. The "dollar limitation" contained in Code Section 402(g) is $10,500 for taxable years beginning in 2000 and 2001, increasing to $11,000 for taxable years beginning in 2002 and increasing by $1,000 for each year thereafter up to $15,000 for taxable years beginning in 2006 and later years. After 2006 the $15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 402(g)(4). Any such adjustments will be in multiples of $500.

(g) **Assigning Excess Deferrals to this Plan.** If a Participant's Elective Deferrals under this Plan together with any elective deferrals (as defined in Regulation 1.402(g)-1(b)) under another qualified cash or deferred arrangement (as described in Code Section 401(k)), a simplified employee pension (as described in Code Section 408(k)(6)), a simple individual retirement account plan (as described in Code Section 408(p)), a salary reduction arrangement (within the meaning of Code Section 3121(a)(5)(D)), or a trust described in Code Section 501(c)(18) cumulatively exceed the "dollar limitation" described in the subsection 4.2(f) of this Section, for such Participant's taxable year, then the Participant may assign to this Plan any Excess Deferrals made during a taxable year of the Participant by notifying the Administrator in writing on or before March 1 following the close of the Participant's taxable year, of the amount of the Excess Deferrals to be assigned to the Plan. A Participant shall be deemed to notify the Administrator of any Excess Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plan, contract, or arrangement of the Employer.

Notwithstanding any other provision of the Plan to the contrary, the Administrator may direct the Trustee to distribute such Excess Deferrals, plus any Income allocable to such Excess Deferrals, to the Participant not later than the first April 15th following the close of the Participant's taxable year. Such a distribution may be made to a Participant to whose account Excess Deferrals were assigned for the preceding year or/and who claims Excess Deferrals for such taxable year or calendar year. Any distribution of

less than the entire amount of Excess Deferrals and Income shall be treated as a pro rata distribution of Excess Deferrals and Income. The amount of the distribution shall not exceed the Participant's Elective Deferrals under the Plan for the taxable year (and any Income allocable to such Excess Deferrals). If a distribution of Excess Deferrals is to be made on or before the last day of the Participant's taxable year, then each of the following conditions must be satisfied:

(1) the distribution must be made after the date on which the Plan received the Excess Deferrals;

(2) the Participant shall designate the distribution as Excess Deferrals; and

(3) the Plan must designate the distribution as a distribution of Excess Deferrals.

Any distribution made pursuant to this Section shall be made first from unmatched Pre-Tax Elective Deferrals and, thereafter, from unmatched Roth Elective Deferrals (unless the Participant elects to reverse that order), and, thereafter, from Pre-Tax Elective Deferrals which are matched, and, thereafter, from Roth Elective Deferrals which are matched, unless the Participant elects to reverse that order.

Matching Contributions that relate to Excess Deferrals (regardless of whether such Excess Deferrals are Pre-Tax Elective Deferrals or Roth Elective Deferrals) which are distributed pursuant to this Section 4.2(g) shall be treated as a Forfeiture.

(h) **Coordination with ADP Test.** Notwithstanding Section 4.2(g) above, a Participant's Excess Deferrals shall be reduced, but not below zero, by any distribution of Excess Contributions pursuant to Section 4.6 for the Plan Year beginning with or within the taxable year of the Participant.

(i) **Segregation.** Elective Deferrals made pursuant to this Section may be segregated into a separate account for each Participant in a federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate, or other short-term debt security acceptable to the Trustee until such time as the allocations pursuant to Section 4.4 have been made.

(j) **No conditions to receive Elective Deferrals.** Notwithstanding anything herein to the contrary, Participants who terminated employment for any reason during the Plan Year shall share in the Elective Deferrals made by the Employer for the year of termination without regard to the Hours of Service credited.

(k) **Procedures to implement deferral elections.** The Employer and the Administrator may adopt a procedure to implement the salary reduction elections provided for herein. If such procedure is adopted, then the procedure shall include (and shall not be limited to) the following:

(1) A Participant must make an initial salary deferral election, or an election to receive cash in lieu of a salary deferral election, unless the Employer has implemented an automatic deferral election feature. If the Participant fails to make an initial salary deferral election, or an election to receive cash in lieu of a salary deferral election, if the automatic deferral election applies, then such Participant may thereafter make an election in accordance with the rules governing modifications. The Participant shall make such an election by entering into a salary reduction agreement with the Employer and filing such agreement with the Administrator. Such election shall initially be effective beginning with the pay period following the acceptance of the salary reduction agreement by the Administrator (or as soon thereafter as practical), shall not have retroactive effect and shall remain in force until revoked.

(2) A Participant may modify a prior salary deferral election at any time during the Plan Year and concurrently make a new election by filing a notice with the Administrator (in accordance with procedures established by the Administrator) within a reasonable time before the pay period for which such modification is to be effective. Any modification shall be implemented as soon as practical after being accepted by the Administrator, shall not have retroactive effect and shall remain in force until revoked.

(3) A Participant may elect to prospectively revoke the Participant's salary reduction agreement in its entirety at any time during the Plan Year by providing the Administrator with thirty (30) days written notice of such revocation (or upon such shorter notice period as may be acceptable to the Administrator). Such revocation shall become effective as of the beginning of the first pay period coincident with or next following the expiration of the notice period (or as soon thereafter as practical).

(4) Any notices or required actions under this subsection may be provided or made in accordance with Section 10.14.

4.3 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, then the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.4 ALLOCATION OF CONTRIBUTION AND USAGE OF FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to a particular Account of each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution as follows:

(1) **Elective Deferrals.** With respect to the Elective Deferrals made pursuant to Section 4.1(a), to each Participant's Elective Deferral Account.

(2) **Matching Contributions.** With respect to the Matching Contribution made pursuant to Section 4.1(b), to each Participant's Matching Contribution Account in accordance with Section 4.1(b).

Any Participant employed during the Plan Year shall be eligible to share in the Matching Contribution for the Plan Year.

(3) **Qualified Nonelective Contributions.** With respect to the Qualified Nonelective Contribution made pursuant to Section 4.1(c), to each Participant's Qualified Nonelective Contribution Account in accordance with Section 4.1(c).

The Employer may limit such Qualified Nonelective Contributions only to Participants who are Nonhighly Compensated Employees and/or Non-Key Employees. In addition, the Employer may condition such Qualified Nonelective Contributions only to Participants who have completed a Period of Service (or portion thereof) during the Plan Year and/or who are employed on the last day of the Plan Year.

(4) **Nonelective Contributions.** With respect to the Nonelective Contribution made on behalf of each Participant pursuant to Section 4.1(d), to each such Participant's Nonelective Contribution Account.

(5) **Gateway Contribution.** In addition to any Nonelective Contribution of the previous subsection, with respect to any Gateway Contribution, the Administrator shall allocate such contribution as follows:

(i) Eligibility for Gateway Contribution. Any Gateway Contribution made pursuant to Section 4.1(d) for a Plan Year will be allocated to each Participant who is a Nonhighly Compensated Employee and who receives an allocation of "Employer contributions" for such Plan Year. In applying the provisions of this subsection, the term "Employer contributions" means any Nonelective Contributions (including any amount that is contributed solely for the purpose of meeting any top-heavy contribution requirement), any Nonelective ADP Test Safe Harbor Contributions and, except as otherwise provided in subsections (iv) and (vi) below, any Qualified Nonelective Contributions, but such term excludes any Matching Contributions. Furthermore, the term "Employer contributions" shall also include any Forfeitures that are allocated to a Participant, other than Forfeitures that are subject to Code Section 401(m) because those Forfeitures are allocated as Matching Contributions.

(ii) Any Gateway Contribution made pursuant to this subsection for a Plan Year will be allocated without regard to any allocation conditions otherwise applicable to "Employer contributions" under the Plan.

(iii) Amount of Gateway Contribution. The Gateway Contribution will be allocated to each Participant who is a Nonhighly Compensated Employee (as described in subsection (i) and (ii) above) in the amount necessary to provide an overall allocation rate equal to the lesser of:

(A) 5% of 415 Compensation or

(B) one-third (1/3) of the highest allocation rate for any Highly Compensated Employee for the Plan Year.

(iv) However, the amount of the Gateway Contribution allocated to each Nonhighly Compensated Employee who is a Participant (as described in subsection (i) and (ii) above) shall be reduced by the amount of any other "Employer contributions," excluding any Qualified Nonelective Contributions that are used to satisfy any ADP test under Regulation Section 401(k)-2, or any ACP test under Regulation Section 401(m)-2 allocated for the same Plan Year to such Participant.

(v) For allocation purposes of the 5% Gateway Contribution alternative under (A) of subsection (iii) above, 415 Compensation shall be determined for the Plan Year (rather than the Limitation Year).

(vi) For allocation purposes of the 1/3 Gateway Contribution alternative under (B) of subsection (iii) above, the Administrator will (a) determine the allocation rate, and (b) allocate the Gateway Contribution, using a Participant's Compensation, provided the definition of Compensation satisfies Regulation Section 1.414(s). In addition, the allocation rate for any Participant is determined by dividing the total "Employer contributions" made on behalf of such Participant by the Participant's Compensation (as defined in the preceding sentence). However, solely for purposes of determining the allocation rate of any Nonhighly Compensated Employee, Qualified Nonelective Contributions that are used to satisfy the ADP Test or the ACP Test, shall not be taken into account.

(vii) Otherwise excludable Employee and early participation rules. Notwithstanding anything in this Section to the contrary, the provisions of this Section may be applied separately to each plan within the meaning of Regulation 1.410(b)-7(c)(3). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under that regulation, provided such date is applied on a consistent and uniform basis to all Participants.

(6) **Entitlement to Nonelective Contribution.** Any Participant employed during the Plan Year shall be eligible to share in the discretionary contribution made pursuant to Section 4.1(d) for the year.

(c) **Usage of Forfeitures.** On or before each Anniversary Date, any Forfeitures may be made available to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 3.5(d), and any remaining Forfeitures may be used to satisfy any contribution that may be required pursuant to Section 3.8 or 6.10, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be allocated in the following manner:

(1) Forfeitures attributable to Matching Contributions made pursuant to Section 4.1(b) shall be used to reduce the Employer's Matching Contributions for the Plan Year.

(d) **Minimum required allocation to those not otherwise eligible to share.** For any Top-Heavy Plan Year, Employees not otherwise eligible to share in the allocation of contributions as provided above, shall receive the minimum required allocation of Section 4.4(h) if eligible pursuant to the provisions of Section 4.4(k).

(e) **Allocation of earnings.** As of each Valuation Date, before the current valuation period allocation of Employer contributions, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's nonsegregated accounts bear to the total of all Participants' nonsegregated accounts as of such date. Earnings or losses with respect to a Participant's Directed Account shall be allocated in accordance with Section 4.13.

(f) **Incoming transfers and rollovers.** Participants' transfers from other qualified plans and rollovers deposited in the general Trust Fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(g) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends received on insurance Contracts.

(h) **Minimum required allocation for Top-Heavy Plan Years.** Notwithstanding the foregoing, for any Top-Heavy Plan Year, the sum of the Employer contributions allocated to the Account of each Employee shall be equal to at least three percent (3%) of such Employee's 415 Compensation (reduced by contributions and forfeitures, if any, allocated to each Employee in any defined contribution plan included with this Plan in a required aggregation group). However, if (1) the sum of the Employer contributions allocated to the Participant's Account of each Key Employee for such Top-Heavy Plan Year is less than three percent (3%) of each Key Employee's 415 Compensation and (2) this Plan is not required to be included in an aggregation group to enable a defined benefit plan to meet the requirements of Code Section 401(a)(4) or 410, then the sum of the Employer contributions allocated to the Participant's Account of each Employee shall be equal to the largest percentage allocated to the Account of any Key Employee. However, in determining whether a Non-Key Employee has received the minimum required allocation, such Non-Key Employee's Elective Deferrals shall not be taken into account. The minimum allocation required (to the extent required to be nonforfeitable under Code Section 416(b)) may not be forfeited under Code Section 411(a)(3)(B) or 411(a)(3)(D).

However, no minimum required allocation shall be required in this Plan for any Employee who participates in another defined contribution plan subject to Code Section 412 included with this Plan in a required aggregation group, if the other defined contribution plan subject to Code Section 412 satisfies the minimum required allocation.

(i) **Top-Heavy contribution allocation.** For purposes of the minimum required allocation set forth above, the percentage allocated to the Account of any Key Employee who is a Participant shall be equal to the ratio of the sum of the Employer contributions (excluding any Catch-Up Contributions) allocated on behalf of such Key Employee for the Plan Year divided by the 415 Compensation for such Key Employee for the Plan Year.

(j) **Matching contributions used to satisfy top-heavy contribution.** Matching Contributions shall be taken into account for purposes of satisfying the minimum required allocation of Code Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to Matching Contributions under the Plan or, if the Plan provides that the minimum required allocation shall be met in another plan, such other plan. Matching Contributions that are used to satisfy the minimum required allocation shall be treated as Matching Contributions for purposes of the ACP Test and other requirements of Code Section 401(m).

(k) **Participants eligible for top-heavy allocation.** For any Top-Heavy Plan Year, the minimum required allocation set forth above shall be allocated to the Nonelective Contribution Account of all Employees who are Participants and who are employed by the Employer on the last day of the Plan Year regardless of the Employee's level of Compensation, including Employees who have (1) failed to complete a Period of Service; and (2) declined to make mandatory contributions (if required) or, in the case of a cash or deferred arrangement, Elective Deferrals to the Plan.

(l) **415 Compensation for top-heavy purposes.** For the purposes of this Section, 415 Compensation will be limited to the same dollar limitations set forth in Section 1.17, adjusted in such manner as permitted under Code Section 415(d).

(m) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and the correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

4.5 ACTUAL DEFERRAL PERCENTAGE TEST

(a) **ADP Test.** The ADP for Highly Compensated Employees who are Participants for each Plan Year and the ADP for Nonhighly Compensated Employees who are Participants for each Plan Year (or for the preceding Plan Year if the prior year testing method is used) shall satisfy one of the following tests:

(1) The ADP for the group of Highly Compensated Employees who are Participants shall not exceed the ADP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year if the prior year testing method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 1.25, or

(2) The ADP for the group of Highly Compensated Employees who are Participants shall not exceed the ADP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants) by more than two percentage points. Furthermore, the ADP for the group of Highly Compensated Employees who are Participants shall not exceed the ADP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 2.

(b) **Participant regardless of deferral election.** For the purposes of Sections 4.5(a) and 4.6, a Participant shall be any Employee eligible to make a deferral election pursuant to Section 4.2 at any point during the Plan Year, whether or not such deferral election was made or suspended pursuant to Section 4.2.

(c) **Aggregation with other plans.** In the event this Plan satisfies the requirements of Code Sections 401(a)(4), 401(k), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this Plan, then this Section shall be applied by determining the ADP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's Nonhighly Compensated Employees are involved in a plan coverage change as defined in Regulation Section 1.401(k)-2(c)(4), then any adjustments to the Nonhighly Compensated Employees' ADP for the prior year will be made in accordance with such Regulations, unless the Employer has elected to use the current year testing method. Plans may be aggregated in order to satisfy Code Section 401(k) only if they have the same Plan Year and use the same ADP Testing method.

(d) **ADP of Highly Compensated Employee in multiple plans.** For the purposes of this Section, the ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Nonelective Contributions and/or Qualified Matching Contributions, if treated as Elective Deferrals for purposes of the ADP Test) allocated to the Participant's accounts under two or more cash or deferred arrangements described in Code Section 401(k) of the Employer or an Affiliated Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Nonelective Contributions and/or Qualified Matching Contributions) were made under a single cash or deferred arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements of the Employer or an Affiliated Employer that have different plan years, then all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under the Regulations of Code Sections 401(k) or 410(b).

(e) **Testing method.** For the purpose of this Section, when calculating the ADP for the group of Nonhighly Compensated Employees who are Participants, the current year testing method shall be used. Once the current year testing method has been elected, then the Employer may elect to use the prior year testing method for a Plan Year only if the Plan has used the current year testing method for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years that the Plan has been in existence) or if, as a result of a merger or acquisition described in Code Section 410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing method and a plan using current year testing method and the change is made within the transition period described in Code Section 410(b)(6)(C)(ii). An election to use 3% for the first Plan Year is an election to use the prior-year method for the first Plan Year.

(f) **Otherwise excludable Employee and early participation rules.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.6 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation Section 1.401(k)-1(b)(4)(iv). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code Section 410(b) provided such date is applied on a consistent and uniform basis to all Participants. Alternatively, the provisions of Code Section 401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the greatest minimum age and service requirements of Code Section 410(a)(1)(A).

(g) **Timing of allocations.** For purposes of determining the ADP Test, only Elective Deferrals, Qualified Nonelective Contributions and Qualified Matching Contributions that are contributed to the Plan prior to the end of the twelve (12) month period immediately following the Plan Year to which the contributions relate shall be considered.

(h) **Targeted Qualified Nonelective Contributions.** Notwithstanding the preceding, Qualified Nonelective Contributions cannot be taken into account in determining the ADR for a Plan Year for a Nonhighly Compensated Employee to the extent such contributions exceed the product of that Nonhighly Compensated Employee's 414(s) Compensation and the greater of five percent (5%) or two (2) times the Plan's "representative contribution rate." Any Qualified Nonelective Contribution taken into account under an ACP Test under Regulation Section 1.401(m)-2(a)(6) (including the determination of the representative contribution rate for purposes of Regulation Section 1.401(m)-2(a)(6)(v)(B)), is not permitted to be taken into account for purposes of this paragraph (including the determination of the representative contribution rate under this Section). For purposes of this subsection:

(1) The Plan's "representative contribution rate" is the lowest applicable contribution rate of any eligible Nonhighly Compensated Employee among a group of eligible Nonhighly Compensated Employees that consists of half of all eligible Nonhighly Compensated Employees for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible Nonhighly Compensated Employee in the group of all eligible Nonhighly Compensated Employees for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and

(2) The "applicable contribution rate" for an eligible Nonhighly Compensated Employee is the sum of the Qualified Matching Contributions taken into account for the eligible Nonhighly Compensated Employee for the Plan Year and the Qualified Contributions made for the eligible Nonhighly Compensated Employee for the Plan Year, divided by the eligible Nonhighly Compensated Employee's 414(s) Compensation for the same period.

Restriction on Qualified Matching Contributions. Qualified Matching Contributions may only be used to calculate the ADP to the extent that such Qualified Matching Contributions are Matching Contributions that are not precluded from being taken into account for ACP Test purposes under the rules of Regulation Section 1.401(m)-2(a)(5)(ii).

Restrictions of Qualified Nonelective Contributions and Qualified Matching Contributions. Qualified Nonelective Contributions and Qualified Matching Contributions cannot be taken into account to determine the ADP to the extent such contributions are taken into account for purposes of satisfying any other ADP Test, any ACP Test, or the requirements of Regulation Sections 1.401(k)-3, 1.401(m)-3 or 1.401(k)-4. Thus, for example, Matching Contributions that are made pursuant to Regulation Section 1.401(k)-3(c) cannot be taken into account under the ADP Test. Similarly, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation Section 1.401(k)-2(c), then Qualified Nonelective Contributions that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year.

(i) **ADP when no Nonhighly Compensated Employees.** If, for the applicable year for determining the ADP of the Nonhighly Compensated Employees for a Plan Year, there are no eligible Nonhighly Compensated Employees, then the Plan is deemed to satisfy the ADP Test for the Plan Year.

4.6 ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TEST

(a) **Authority to correct.** In the event that the initial allocations of the Elective Deferrals made pursuant to Section 4.2 do not satisfy the ADP Test set forth in Section 4.5(a), the Administrator shall implement some or all of the provisions of this Section in order to correct such failure.

(b) **Corrective action.** The Participant who is the Highly Compensated Employee having the largest dollar amount of Elective Deferrals shall have a portion of such Participant's Elective Deferrals first treated as Catch-Up Contributions and then distributed until the amount of such Participant's remaining Elective Deferrals equals the Elective Deferrals (less Catch-Up Contributions) of the Participant who is the Highly Compensated Employee having the second largest dollar amount of Elective Deferrals (less Catch-Up Contributions). This process shall continue until the total amount of Excess Contributions has been eliminated. In determining the amount of Excess Contributions to be treated as Catch-Up Contributions and/or distributed with respect to an affected Participant who is a Highly Compensated Employee as determined herein, such amount shall be reduced pursuant to Section 4.2(g) by any Excess Deferrals previously distributed to such affected Participant who is a Highly Compensated Employee for such Participant's taxable year ending with or within such Plan Year.

(1) **Corrective distribution.** With respect to the distribution of Excess Contributions pursuant to (a) above, such distribution:

(i) may be postponed but not later than the last day of the twelve-month period following the Plan Year to which they are allocable;

(ii) shall be made proportionately from Pre-Tax Elective Deferrals and the related Matching Contributions that are used in the ADP Test pursuant to Section 4.5, and, thereafter; from any Roth Elective Deferrals which are matched and the related Matching Contributions that are used in the ADP Test pursuant to Section 4.5 (unless the Participant elects to reverse that order);

(iii) shall be adjusted for Income; and

(iv) shall be designated by the Employer as a distribution of Excess Contributions (and Income).

Matching contributions which relate to Excess Contributions that are distributed pursuant to this subsection shall be treated as a Forfeiture to the extent required pursuant to Code Section 401(a)(4) and the Regulations thereunder, unless the related Matching Contribution is distributed as an Excess Contribution or as an Excess Aggregate Contribution.

(2) **Income and principal.** Any distribution of less than the entire amount of Excess Contributions shall be treated as a pro rata distribution of Excess Contributions and Income.

(3) **Related Matching Contributions.** Matching Contributions which relate to Excess Contributions shall be forfeited unless the related Matching Contribution is distributed as an Excess Aggregate Contribution pursuant to Section 4.8.

(c) **Corrective contributions.** Notwithstanding the above, if the current year testing method is used, within twelve (12) months after the end of the Plan Year, the Employer may make a Qualified Nonelective Contribution or Qualified Matching Contribution in accordance with one of the following provisions which contribution shall be allocated either to the Qualified Nonelective Contribution

Account or Qualified Matching Contribution Account of each Participant who is a Nonhighly Compensated Employee eligible to share in the allocation in accordance with such provision. If the prior year testing method is used, then neither a Qualified Nonelective Contribution nor a Qualified Matching Contribution may be made to correct a failed ADP test. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to:

(1) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Participants in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year.

(2) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(3) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in equal amounts (per capita).

(4) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in equal amounts (per capita). However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(5) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9 or the maximum that may be taken into account in the ADP Test pursuant to Section 4.5(h) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied.

(6) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9 or the maximum that may be taken into account in the ADP Test pursuant to Section 4.5(h) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(7) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees.

(8) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(9) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Qualified Matching Contributions imposed by the provisions of Section 4.7(f). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied.

(10) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Qualified Matching Contributions imposed by the provisions of Section 4.7(f). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied). However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

Notwithstanding the above, if the testing method changes from the current year testing method to the prior year testing method, then for purposes of preventing the double counting of Qualified Nonelective Contributions for the first testing year for which the change is effective, any special Qualified Nonelective Contribution on behalf of Nonhighly Compensated Participants used to satisfy the ADP Test or the ACP Test under the current year testing method for the prior year testing year shall be disregarded.

(d) **Administrator may prevent projected failure.** If during a Plan Year, it is projected that the aggregate amount of Elective Deferrals to be allocated to all Highly Compensated Participants under this Plan would cause the Plan to fail the tests set forth in Section 4.5(a), then the Administrator may automatically reduce the deferral amount of affected Highly Compensated Participants, beginning with the Highly Compensated Participant who has the highest ADR until it is anticipated the Plan will pass the tests or until such Participant's ADR equals the ADR of the Highly Compensated Participant having the next highest ADR. This process may continue until it is anticipated that the Plan will satisfy one of the tests set forth in Section 4.5(a). Alternatively, the Employer may specify a maximum percentage of Compensation that may be deferred.

(e) **Excise tax after 2 1/2 months.** Any Excess Contributions (and Income) which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

4.7 ACTUAL CONTRIBUTION PERCENTAGE TEST

(a) **ACP Test.** The ACP for Highly Compensated Employees who are Participants for each Plan Year and the ACP for Nonhighly Compensated Employees who are Participants for each Plan Year (or for the preceding Plan Year if the prior year testing method is used) shall satisfy one of the following tests:

(1) The ACP for the group of Highly Compensated Employees who are Participants shall not exceed the ACP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year if the prior year testing method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 1.25; or

(2) The ACP for the group of Highly Compensated Employees who are Participants shall not exceed the ACP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants) by more than two percentage points. Furthermore, the ACP for the group of Highly Compensated Employees who are Participants shall not exceed the ACP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 2.

Notwithstanding the above, for the first Plan Year that the Plan has a Matching Contribution component and this Plan is not a successor plan or is otherwise prohibited from using such provisions pursuant to Regulation Section 1.401(m)-2(c)(2), for purposes of the foregoing ACP Test, the ACP for the group of Nonhighly Compensated Employees who are Participants shall be such first Plan Year's ACP of the group of Nonhighly Compensated Employees who are Participants.

(b) **Aggregation with other plans.** In the event that this Plan satisfies the requirements of Code Sections 401(a)(4), 401(m), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan (other than the average benefits test under Code Section 410(b)(2)(A)(ii)), then this Section shall be applied by determining the ACP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's Nonhighly Compensated Employees are involved in a plan coverage change as defined in Regulation Section 1.401(m)-2(c)(4), then any adjustments to the Nonhighly Compensated Employees ACP for the prior year will be made in accordance with such Regulations, unless the Employer has elected to use the current year testing method. Plans may be aggregated in order to satisfy Code Section 401(m) only if they have the same Plan Year and use the same ACP testing method.

(c) **ACP of Highly Compensated Employee in multiple plans.** For the purposes of this Section, if a Highly Compensated Employee is a Participant under two (2) or more plans which are maintained by the Employer or an Affiliated Employer to which Matching Contributions, nondeductible Employee contributions, or both, are made, then all such contributions on behalf of such Highly Compensated Employee shall be aggregated for purposes of determining such Highly Compensated Employee's ACR. If the plans have different plan years, then all such contributions made during the Plan Year under all such arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code Section 401(m).

(d) **Current year testing method.** Except as provided above with respect to the first Plan Year, for the purpose of this Section, when calculating the ACP for the group of Nonhighly Compensated Employees who are Participants, the current year testing method shall be used. Once the current year testing method has been elected, then the Employer may elect to use the prior year testing method for a Plan Year only if the Plan has used the current year testing method for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years that the Plan has been in existence) or if, as a result of a merger or acquisition described in Code Section 410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing method and a plan using current year testing method and the change is made within the transition period described in Code Section 410(b)(6)(C)(ii).

(e) **Otherwise excludable Employee and early participation rules.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.8 may be applied separately (or will be applied separately to the extent required by Regulations) to each plan within the meaning of Regulation Section 1.401(m)-1(b)(4). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code Section 410(b) provided such date is applied on a consistent and uniform basis to all Participants. Alternatively, the provisions of Code Section 401(m)(5)(C) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the greatest minimum age and service requirements of Code Section 410(a)(1)(A).

(f) **Targeted Matching Contributions.** Notwithstanding the preceding, a Matching Contribution (and a Qualified Matching Contribution not used in the ADP Test) with respect to an Elective Deferral for a year is not taken into account in determining the ACP for Nonhighly Compensated Employees to the extent it exceeds the greatest of:

(1) five percent (5%) of the Participant's 414(s) Compensation for the year;

(2) the Employee's Elective Deferrals for the year; and

(3) the product of two (2) times the Plan's "representative matching rate" and the Participant's Elective Deferrals for the year.

For purposes of this subsection, the Plan's "representative matching rate" is the lowest "matching rate" for any eligible Nonhighly Compensated Employee among a group of Nonhighly Compensated Employees that consists of half of all eligible Nonhighly Compensated Employees in the Plan for the Plan Year who make Elective Deferrals for the Plan Year (or, if greater, the lowest "matching rate" for all eligible Nonhighly Compensated Employees in the Plan who are employed by the Employer on the last day of the Plan Year and who make Elective Deferrals for the Plan Year).

For purposes of this subsection, the "matching rate" for an Employee generally is the Matching Contributions (and Qualified Matching Contributions not used in the ADP Test) made for such Employee divided by the Employee's Elective Deferrals for the year. If the matching rate is not the same for all levels of Elective Deferrals for an Employee, then the Employee's "matching rate" is determined assuming that an Employee's Elective Deferrals are equal to six percent (6%) of 414(s) Compensation.

(g) **Targeted Qualified Nonelective Contributions.** Notwithstanding the preceding, Qualified Nonelective Contributions cannot be taken into account in determining the ACR for a Plan Year for a Nonhighly Compensated Employee to the extent such contributions exceed the product of that Nonhighly Compensated Employee's 414(s) Compensation and the greater of five percent (5%) or two times the Plan's "representative contribution rate." Any Qualified Nonelective Contribution taken into account in the ADP test under Regulation Section 1.401(k)-2(a)(6) (including determination of the representative contribution rate for purposes of Regulation Section 1.401(k)-2(a)(6)(iv)(B)), is not permitted to be taken into account for purposes of this paragraph (including the determination of the representative contribution rate under this Section). For purposes of this subsection:

(1) The Plan's "representative contribution rate" is the lowest applicable contribution rate of any eligible Nonhighly Compensated Employee among a group of eligible Nonhighly Compensated Employees that consists of half of all eligible Nonhighly Compensated Employees for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible Nonhighly Compensated Employee in the group of all eligible Nonhighly Compensated Employees for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and

(2) The "applicable contribution rate" for an eligible Nonhighly Compensated Employee is the sum of the Matching Contributions taken into account under this Section for the eligible Nonhighly Compensated Employee for the Plan Year and the Qualified Nonelective Contributions taken into account under this Section made for the eligible Nonhighly Compensated Employee for the Plan Year, divided by the eligible Nonhighly Compensated Employee's 414(s) Compensation for the same period.

Restrictions of Qualified Nonelective Contributions and Qualified Matching Contributions. Qualified Nonelective Contributions and Qualified Matching Contributions cannot be taken into account to determine the ACP to the extent such contributions are taken into account for purposes of satisfying any other ACP Test, any ADP Test, or the requirements of Regulation Sections 1.401(k)-3, 1.401(m)-3 or 1.401(k)-4. Thus, for example, Qualified Nonelective Contributions that are made pursuant to Regulation Section 1.401(k)-3(b) cannot be taken into account under the ACP Test. Similarly, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation Section 1.401(m)-2(c)(1), then Qualified Nonelective Contributions that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year.

(h) **ACP when no Nonhighly Compensated Employees.** If, for the applicable year for determining the ACP of the Nonhighly Compensated Employees for a Plan Year, there are no eligible Nonhighly Compensated Employees, then the Plan is deemed to satisfy the ACP Test for the Plan Year.

4.8 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TEST

(a) **Authority to correct.** In the event that the ACP Test set forth in Section 4.7(a) is not satisfied, the Administrator shall implement some or all of the provisions of this Section in order to correct such failure.

(b) **Corrective distribution or Forfeiture.** On or before the close of the following Plan Year, the Participant who is the Highly Compensated Employee having the largest dollar amount of Contribution Percentage Amounts shall have a portion of such Contribution Percentage Amounts (and Income allocable to such amounts) distributed or, if non-Vested, treated as a Forfeiture (including Income allocable to such Forfeitures) until the total amount of Excess Aggregate Contributions has been distributed, or until the amount of the Participant's Contribution Percentage Amounts equals the Contribution Percentage Amounts of the Participant who is a Highly Compensated Employee having the next largest amount of Contribution Percentage Amounts. This process shall continue until the total amount of Excess Aggregate Contributions has been distributed or forfeited. Any distribution and/or Forfeiture of Contribution Percentage Amounts shall be made in the following order:

(1) Matching Contributions distributed and/or forfeited pursuant to Section 4.6(b);

(2) Any remaining Matching Contributions.

If the distribution of Excess Aggregate Contributions attributable to Matching Contributions is not in proportion to the Vested and non-Vested portion of such Matching Contributions, then the Vested portion of the Participant's Matching Contribution Account after the distribution shall be subject to Section 6.5(e).

(c) **Source of corrective distribution or Forfeiture.** Any distribution and/or Forfeiture of less than the entire amount of Excess Aggregate Contributions (and Income) shall be treated as a pro rata distribution and/or Forfeiture of Excess Aggregate Contributions (and Income). Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and Income). Forfeitures of Excess Aggregate Contributions shall be treated in accordance with Section 4.4. However, no such Forfeiture may be allocated to a Highly Compensated Participant whose Excess Aggregate Contributions are reduced pursuant to this Section.

(d) **Treatment of Excess Aggregate Contributions.** Excess Aggregate Contributions, including Matching Contributions that are treated as Forfeitures, shall be treated as Employer contributions for purposes of Code Sections 404 and 415 even if distributed from the Plan.

(e) **Ordering of tests.** The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions, if any, to be treated as After-Tax Voluntary Contributions due to recharacterization for the Plan Year of any other qualified cash or deferred arrangement (as defined in Code Section 401(k)) maintained by the Employer that ends with or within the Plan Year.

(f) **Administrator may prevent projected failure.** If during a Plan Year the projected aggregate Contribution Percentage Amounts to be allocated to all Participants who are Highly Compensated Employees under this Plan would, by virtue of the ACP Test of Section 4.7(a), cause the Plan to fail the ACP Test, then the Administrator may automatically reduce proportionately or in the order provided in Section 4.8(b) the projected share each affected Participant who is a Highly Compensated Employee of such contributions by an amount necessary to satisfy the ACP Test of Section 4.7(a).

(g) **Corrective contributions.** Notwithstanding the above, if the current year testing method is used, within twelve (12) months after the end of the Plan Year, the Employer may make a Qualified Nonelective Contribution, Qualified Matching Contribution, or Matching Contribution in accordance with one of the following provisions, which contribution shall be allocated to the Qualified Nonelective Contribution Account, Qualified Matching Contribution Account, or Matching Account of each Participant who is a Nonhighly Compensated Employee eligible to share in the allocation in accordance with such provision. If the prior year testing method is used, then neither a Qualified Nonelective Contribution nor Qualified Matching Contribution may be made to correct a failed ACP test. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to:

(1) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Participants in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year.

(2) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(3) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in equal amounts (per capita).

(4) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in equal amounts (per capita). However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(5) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, or the maximum that may be taken into account in the ACP Test pursuant to Section 4.7(g) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied.

(6) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, or the maximum that may be taken into account in the ACP Test pursuant to Section 4.7(g) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.7(a) is

satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(7) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees.

(8) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(9) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Targeted Matching Contributions imposed by the provisions of Section 4.7(f). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied.

(10) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Targeted Matching Contributions imposed by the provisions of Section 4.7(f). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(h) **Excise tax.** Any Excess Aggregate Contributions (and Income) which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

4.9 MAXIMUM ANNUAL ADDITIONS

(a) **Maximum permissible amount.** Notwithstanding the foregoing, the maximum Annual Additions credited to a Participant's Accounts for any Limitation Year shall equal the lesser of:

(1) $40,000 adjusted annually as provided in Code Section 415(d) pursuant to the Regulations, or

(2) one-hundred percent (100%) of the Participant's 415 Compensation for such Limitation Year.

The percentage limitation in paragraph (2) above shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an annual addition, or (2) any amount otherwise treated as an annual addition under Code Section 415(l)(1).

For any short Limitation Year, the dollar limitation in paragraph (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short Limitation Year and the denominator of which is twelve (12).

(b) **Reasonable estimate permissible.** Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(c) **Excess Annual Additions defined.** For purposes of this Article, the term "Excess Annual Additions" for any Participant for a Limitation Year means a Participant's Annual Additions under this Plan and such other plans of the Employer or Affiliated Employer that are in excess of the maximum permissible amount of Section 4.9 for a Limitation Year. The Excess Annual Additions will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, and then by Annual Additions to a plan subject to Code Section 412, regardless of the actual allocation date.

(d) **Annual Additions can cease when maximum permissible amount reached.** If the Employer contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the Annual Additions for the Limitation Year to exceed the maximum permissible amount, then the amount that would otherwise be contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the maximum permissible amount, and any such amounts which would have been allocated to such Participant may be allocated to other Participants.

(e) **All DC plans treated as one plan.** For the purpose of this Section, all qualified defined contribution plans (regardless of whether such plan has terminated) maintained by the Employer during a Limitation Year shall be treated as one defined contribution plan.

(f) **All Employees of Related Employers treated as employed by one Employer.** For the purpose of this Section, if the Employer is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)), is a member of an affiliated service group (as defined by Code Section 414(m)), or is a member of a group of entities required to be aggregated pursuant to Regulations under Code Section 414(o), then all Employees of such Employers shall be considered to be employed by a single Employer.

(g) **413(c) Plan.** If this is a plan described in Code Section 413(c) (other than a plan described in Code Section 414(f)), then all of the benefits or contributions attributable to a Participant from all of the Employers maintaining this Plan shall be taken into account in applying the limits of this Section with respect to such Participant. Furthermore, in applying the limitations of this Section with respect to such a Participant, the total 415 Compensation received by the Participant from all of the Employers maintaining the Plan shall be taken into account.

(h)(1) **DC Plans with same/different Anniversary Dates.** If a Participant participates in more than one defined contribution plan maintained by the Employer that have different Anniversary Dates, then the maximum permissible amount under this Plan shall equal the maximum permissible amount for the Limitation Year minus any Annual Additions previously credited to such Participant's Accounts during the Limitation Year.

(2) If a Participant participates in both a defined contribution plan subject to Code Section 412 and a defined contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, then Annual Additions will be credited to the Participant's Accounts under the defined contribution plan subject to Code Section 412 prior to crediting Annual Additions to the Participant's Accounts under the defined contribution plan not subject to Code Section 412.

(3) If a Participant participates in more than one defined contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, then the maximum permissible amount under this Plan shall equal the product of (A) the maximum permissible amount for the Limitation Year minus any Annual Additions previously credited under subparagraphs (1) or (2) above, multiplied by (B) a fraction (i) the numerator of which is the Annual Additions which would be credited to such Participant's Accounts under this Plan without regard to the limitations of Code Section 415 and (ii) the denominator of which is such Annual Additions for all plans described in this subparagraph.

4.10 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

(a) **Disposal of Excess Annual Additions.** Allocation of Annual Additions to a Participant's Account for a Limitation Year generally will cease in accordance with Section 4.9(d) once the maximum permissible amount of Section 4.9 has been reached for such Limitation Year. However, if, as a result of a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of Elective Deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant with respect to the maximum permissible amount of Section 4.9 or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the Annual Additions under this Plan would cause Excess Annual Additions for any Participant, then the Excess Annual Additions will be disposed of in one of the following ways, as uniformly determined by the Administrator for all Participants similarly situated.

(1) Any matched Elective Deferrals and Matching Contributions which relate to such Elective Deferrals shall be proportionately reduced to the extent they would reduce the Excess Annual Additions. The Elective Deferrals (and any gains attributable to such Elective Deferrals) will be distributed to the Participant and the Matching Contributions (and any gains attributable to such Matching Contributions) will be used to reduce the Employer contribution in the next Limitation Year;

(2) If the Participant is covered by the Plan at the end of the Limitation Year, then the Excess Annual Additions will be used to reduce the Employer contribution for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;

(3) If the Participant is not covered by the Plan at the end of the Limitation Year, then the Excess Annual Additions will be held unallocated in a "Section 415 suspense account." The "Section 415 suspense account" will be applied to reduce future Employer contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

(4) If a "Section 415 suspense account" is in existence at any time during the Limitation Year pursuant to this Section, then the "Section 415 suspense account" will not participate in the allocation of investment gains and losses of the Trust Fund. If a "Section 415 suspense account" is in existence at any time during a particular Limitation Year, then all amounts in the "Section 415 suspense account" must be allocated and reallocated to Participants' Accounts before any Employer contributions or any Employee contributions may be made to the Plan for that Limitation Year. Except as provided above, Excess Annual Additions may not be distributed to Participants.

(b) **Section 415 suspense account defined.** For purposes of this Section, the term "Section 415 suspense account" means an unallocated account equal to the sum of Excess Annual Additions for all Participants in the Plan during the Limitation Year.

4.11 PLAN-TO-PLAN TRANSFERS (OTHER THAN ROLLOVERS) FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), amounts may be transferred (within the meaning of Code Section 414(l)) to this

Plan from other tax qualified plans under Code Section 401(a), provided that the plan from which such funds are transferred permits the transfer to be made, the funds are not subject to the notice and consent requirements of Code Section 417 (i.e., qualified joint and survivor annuity requirements), and the transfer will not jeopardize the tax exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require satisfactory evidence that the amounts to be transferred meet the requirements of this Section. The transferred amounts shall be allocated to the Transfer Account of the Participant.

At the time of the transfer, the nonforfeitable percentage of the funds under the transferor plan shall apply, but thereafter shall increase (if applicable) for each Period of Service that the Participant completes after such transfer in accordance with the Vesting provisions of this Plan applicable to the type of Account represented by the transferred funds (e.g., transferred nonelective funds will be subject to the vesting schedule applicable to Nonelective Contributions under this Plan). If the vesting schedule applicable to a Transferred Account changes as a result of this paragraph, such change will be treated as an amendment to the vesting schedule for each affected Participant.

(b) **Accounting of transfers.** The Transfer Account of a Participant shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (d) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Restrictions on elective deferrals.** Except as permitted by Regulations (including Regulation Section 1.411(d)-4), amounts attributable to elective deferrals (as defined in Regulation Section 1.401(k)-6), including amounts treated as elective deferrals, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in Code Section 401(k)(2) and the Regulations.

(d) **Distribution of Transfer Account.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Transfer Account of a Participant shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distributions of amounts held in the Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder. Furthermore, the Transfer Account shall be considered as part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(e) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.13.

(f) **Protected benefits.** Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall only be permitted if it will not result in the elimination or reduction of any "Section 411(d)(6) protected benefit" as described in Section 8.1(e).

(g) **Separate Accounts.** With respect to each Participant's Transfer Account, separate sub-accounts shall be maintained to the extent necessary to carry out the provisions of this Plan.

4.12 ROLLOVERS FROM OTHER PLANS

(a) **Acceptance of rollovers into the Plan.** With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a rollover by Participants, excluding Participants who are no longer employed as an Employee and including Eligible Employees, provided the rollover will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The rollover amounts shall be allocated to the Rollover Account of the Participant. Furthermore, for a rollover from an eligible retirement plan into this Plan made on or after January 1, 2006, any Roth Elective Deferrals that are accepted as rollovers in this Plan shall be accounted for separately, and must be directly rolled over from a Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent that the rollover is permitted under the rules of Code Section 402(c). The Rollover Account of a Participant shall be 100% Vested at all times and shall not be subject to Forfeiture for any reason.

(b) **Treatment of Rollover Account in the Plan.** The Rollover Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (c) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Distribution of rollovers.** The Administrator, at the election of the Participant, shall direct the Trustee to distribute all or a portion of the amount credited to the Participant's Rollover Account at any time. Furthermore, amounts in the Participant's Rollover Account shall not be considered as part of a Participant's benefit in determining whether the $5,000 threshold has been exceeded for purposes of the timing or form of payments under the Plan as well as for the Participant consent requirements. Any distributions of amounts that are held in the Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

(d) **Limits on accepting rollovers.** Prior to accepting any rollovers to which this Section applies, the Administrator may require the Employee to provide evidence that the amounts to be rolled over to this Plan meet the requirements of this Section. The

Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of rollovers that may be accepted by the Plan.

(e) **Rollovers maintained in a separate account.** The Administrator may direct that rollovers received after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.13.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) The term "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code.

(2) The term "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code Section 401(a) which is exempt from tax under Code Section 501(a)), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and an annuity contract described in Code Section 403(b).

4.13 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed Investments allowed.** Participants may, subject to a procedure established by the Administrator (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest their entire Accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant so directing will thereupon be considered a Participant's Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of earnings.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent that the assets in a Participant's Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Directed Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent that the assets in the Participant's Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Trustee. Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Other documents.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents (or in any other form including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

(g) **Instructions, guidelines or policies.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

4.14 QUALIFIED MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service will be provided in accordance with Code Section 414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code Section 414(u)(4).

ARTICLE V
VALUATIONS

5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and shall deduct all expenses for which the Trustee has not yet obtained reimbursement from the Employer or the Trust Fund. The Trustee may update the value of any shares held in the Participant Directed Account by reference to the number of shares held by that Participant, priced at the market value as of the Valuation Date.

5.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

ARTICLE VI
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for the purposes hereof on the Participant's Normal Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.4, shall continue until such Participant's Late Retirement Date. Upon a Participant's Retirement Date, or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan (or any portion thereof), in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) **100% Vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested.

(b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining amounts credited to the accounts of the deceased Participant to such Participant's Beneficiary.

(c) **Security for loans.** Any security interest held by the Plan by reason of an outstanding loan to the Participant shall be taken into account in determining the amount of the death benefit.

(d) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(e) **Beneficiary designation.** The Beneficiary of the death benefit payable pursuant to this Section shall be the Participant's surviving spouse. Except, however, the Participant may designate a Beneficiary other than the spouse if:

(1) the spouse has waived the right to be the Participant's Beneficiary, or

(2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no qualified domestic relations order as defined in Code Section 414(p) which provides otherwise), or

(3) the Participant has no spouse, or

(4) the spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written notice (or in such other form as permitted by the Internal Revenue Service) of such revocation or change with the Administrator. However, the Participant's spouse must again

consent in writing (or in such other form as permitted by the Internal Revenue Service) to any change in Beneficiary unless the original consent acknowledged that the spouse had the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elected to relinquish such right.

(f) **Beneficiary if no beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists with respect to all or a portion of the death benefit, or if the Beneficiary of such death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such death benefit will be paid in the following order of priority to:

(1) the Participant's surviving spouse;

(2) the Participant's children, including adopted children, per stirpes;

(3) the Participant's surviving parents, in equal shares; or

(4) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's designated Beneficiary (or there is no designated Beneficiary, to the Beneficiary's estate).

(g) **Divorce revokes spousal beneficiary designation.** Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or a qualified domestic relations order (within the meaning of Code Section 414(p)) provides otherwise or a subsequent beneficiary designation is made.

(h) **Spousal consent.** Any consent by the Participant's spouse to waive any rights to the death benefit must be in writing (or in such other form as permitted by the Internal Revenue Service), must acknowledge the effect of such waiver, and be witnessed by a Plan representative or a notary public. Further, the spouse's consent must be irrevocable and must acknowledge the specific nonspouse Beneficiary.

(i) **Insured death benefit.** Upon the death of a Participant before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the standard rated premium which was or should have been used for such purpose.

6.3 DISABILITY RETIREMENT BENEFITS

In the event of a Participant's Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested. In the event of a Participant's Disability, the Administrator, in accordance with the provisions of Sections 6.5 and 6.7, shall direct the distribution to such Participant of all Vested amounts credited to such Participant's Account.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on termination of employment.** If a Participant's employment with the Employer is terminated for any reason other than death, Disability or retirement, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 6.4.

In the event that the amount of the Vested portion of the Terminated Participant's Account equals or exceeds the fair market value of any insurance Contracts, the Trustee, when so directed by the Administrator and agreed to by the Terminated Participant, shall assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee, pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Account, and then assign the Contracts to the Terminated Participant.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in a distributable event had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Disability or Normal Retirement). However, at the election of the Participant, the Administrator shall direct the distribution of the entire Vested portion of the Terminated Participant's Account be payable to such Terminated Participant as soon as administratively feasible after termination of employment. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

For purposes of this Section 6.4, if the value of a Terminated Participant's Vested benefit is zero, the Terminated Participant shall be deemed to have received a distribution of such Vested benefit.

(b) **Vesting schedule.** The Vested portion of the Account of any Participant attributable to Employer contributions shall be a percentage of the total amount credited to the Participant's Accounts determined on the basis of the Participant's number of whole year Periods of Service according to the following schedule(s):

(1) The Elective Deferral Account, the Roth Elective Deferral Account, the Qualified Matching Contribution Account and the Qualified Nonelective Contribution Account shall be 100% Vested regardless of a Participant's number of whole year Periods of Service.

(2) A Participant shall be fully Vested in the Nonelective Contribution Account immediately upon entry into the Plan.

(3) The Vested portion of the Matching Contribution Account shall be subject to the following vesting schedule:

Vesting Schedule
Matching Contribution Account

Periods of Service	Percentage
Less than 3	0 %
3	100 %

(c) **Time of application of vesting schedule liberalization.** In the absence of any provision to the contrary, any direct or indirect increase to a Participant's Vested percentage (at any point on a vesting schedule) will not apply to a Participant unless and until such Participant completes an Hour of Service after the effective date of such amendment.

(d) **100% Vesting on partial or full Plan termination.** Notwithstanding the vesting schedule above, upon the complete discontinuance of the Employer contributions to the Plan or upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) **Continuation of old schedule upon subsequent amendment if 3 years of service.** The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Plan. In the event that the Plan is amended to change or modify any vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, then each Participant with an Hour of Service after such change and who has at least three (3) whole year Periods of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If such a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the date the amendment is adopted or deemed to be made and shall end sixty (60) days after the latest of:

(1) the adoption date of the amendment,

(2) the effective date of the amendment, or

(3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

6.5 DISTRIBUTION OF BENEFITS

(a) The Administrator, pursuant to the election of the Participant, shall direct the Trustee to distribute to a Participant or such Participant's Beneficiary the amount (if any) to which the Participant (or Beneficiary) has become entitled under the Plan in one lump-sum payment in cash.

(b) Any distribution to a Participant who has a Total Vested Benefit which exceeds $5,000 shall require such Participant's written consent (or in such other form as permitted by the Internal Revenue Service) if such distribution occurs during the time the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62.

Any such distribution may be made less than thirty (30) days after the notice required under Regulation 1.411(a)-11(c) is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively elects a distribution.

(c) If a mandatory distribution greater than $1,000 is made in accordance with the provisions of the Plan providing for an automatic distribution to a Participant without the Participant's consent, and the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover (in accordance with the direct rollover provisions of the Plan) or to receive the distribution directly, then the Administrator shall direct that the distribution be made in a direct rollover to an Individual Retirement Account described in Code Section 408(a) or an Individual Retirement Annuity described in Code Section 408(b), as designated by the Administrator. The Administrator may operationally implement this provision with respect to distributions that are $1,000 or less.

(d) All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or spouse shall comply with all of the requirements of the Plan.

(e) If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account and the Participant may increase the Vested percentage in such account, then, at any relevant time the Participant's Vested portion of the account will be equal to an amount ("X") determined by the formula:

X equals P(AB plus D) - D

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, and D is the amount of distribution, and the relevant time is the time at which, under the Plan, the Vested percentage in the account cannot increase.

(f) Required minimum distributions (Code Section 401(a)(9)). Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the requirements of Section 6.8.

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) The death benefit payable pursuant to Section 6.2 shall be paid to the Participant's Beneficiary in one lump-sum payment in cash subject to the rules of Section 6.8.

(b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. However, unless a Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is immediately distributable (within the meaning of Section 6.5), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

6.8 REQUIRED MINIMUM DISTRIBUTIONS

(a) **General Rules**

(1) **Precedence.** The requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and take precedence over any inconsistent provisions of the Plan.

(2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

(b) **Time and manner of distribution**

(1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire death benefit will be distributed, or begin to be distributed, as follows:

(i) If the Participant or Beneficiary elects, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or, if the Participant's surviving spouse is the Participant's designated beneficiary, by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. Alternatively, the Participant or Beneficiary may elect to have distribution of the Participant's death benefit be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death. In the absence of any election (including the failure to commence required minimum distributions described by this Section by the December 31 of the calendar year immediately following the calendar year in which the Participant died), distribution of the Participant's death benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(ii) If there is no beneficiary as of September 30 of the year following the year of the Participant's death, the distribution of the Participant's death benefit will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.8(b), other than this paragraph, will apply as if the surviving spouse were the Participant. Thus, in all such cases, the time at which distributions must commence (or be completed by) shall be determined solely by reference to the year that the Participant died, and not the year in which the Participant would have attained age 70 1/2.

For purposes of this Section 6.8(b), unless a surviving spouse is electing to commence benefits based upon the date that the Participant would have attained age 70 1/2, distributions are considered to begin on the Participant's required beginning date. If the surviving-spouse election applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.8(b).

(3) **Forms of distribution.** Unless the Participant's interest is distributed in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 6.8(c) and 6.8(d). All distributions under this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

(c) **Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each distribution calendar year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by designated beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No designated beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before date distributions begin.**

(i) **Participant survived by designated beneficiary.** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.8(d)(1).

(ii) **No designated beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) **Death of surviving spouse before distributions to surviving spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.8(b), this Section 6.8(d)(2) will apply as if the surviving spouse were the Participant.

(e) **Definitions.** For purposes of this Section, the following definitions apply:

(1) "Designated beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code Section 401(a)(9) and Regulation Section 1.401(a)(9)-4, Q&A-4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's "required beginning date." The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9, Q&A-1.

(4) "Participant's account balance" means the "Participant's account balance" as of the last Valuation Date in the calendar year immediately preceding the Distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution calendar year if distributed or transferred in the valuation calendar year.

(5) "Required beginning date" means, with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

(6) "5-percent owner" means a Participant who is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court-appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor Beneficiary, to a parent of such Beneficiary, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the guardian, custodian or parent of a minor or incompetent individual shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, effective with respect to distributions made after March 28, 2005, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed $1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an eligible rollover distribution as defined in Plan Section 6.14 may be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

6.11 PRE-RETIREMENT DISTRIBUTION OF EMPLOYER CONTRIBUTIONS

At such time as a Participant shall have attained age 59 1/2, the Administrator, at the election of the Participant who has not severed employment with the Employer, shall direct the Trustee to distribute all or a portion of the amount then credited to all accounts maintained on behalf of the Participant.

In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

Notwithstanding anything in this Section to the contrary, pre-retirement distributions from a Participant's Elective Deferral Account, Qualified Nonelective Contribution Account, or Qualified Matching Contribution Account shall not be permitted prior to the Participant attaining age 59 1/2 or one of the other events described in Section 4.2(d).

6.12 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) The Administrator, at the election of the Participant who is currently employed as an Employee, shall direct the Trustee to distribute to any Participant from the Vested portion of the Participant's Account the amount necessary to satisfy the immediate and heavy financial need of the Participant, subject to the limitations of this Section. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution. Any withdrawal made pursuant to this Section shall be deemed to be on account of an immediate and heavy financial need of the Participant if the withdrawal is for:

(1) Expenses for (or necessary to obtain) medical care (for the Participant or the spouse or dependent of the Participant) that would be deductible by the Participant under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

(2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code Section 152(d)(1)(B));

(4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's spouse, children, or dependents (as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant. The amount of the immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;

(2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer; and

(3) The Plan, and all other plans maintained by the Employer, provide that the Participant's Elective Deferrals and After-Tax Voluntary Contributions will be suspended for at least six (6) months after receipt of the hardship distribution or, the Participant, pursuant to a legally enforceable agreement, will suspend Elective Deferrals and After-Tax Voluntary Contributions to the Plan and all other plans maintained by the Employer for at least six (6) months after receipt of the hardship distribution;

(c) Notwithstanding the above, distributions from the Participant's Elective Deferral Account pursuant to this Section shall be limited in amount to the value of the Participant's total Elective Deferrals as of the date of distribution, reduced by the amount of any previous distributions from this Account pursuant to this Section and Section 6.11. No amount may be distributed from a Participant's Qualified Matching Contribution Account (which includes ADP Test Safe Harbor Matching Contributions) or Qualified Nonelective Contribution Account (which includes ADP Test Safe Harbor Nonelective Contributions) on account of financial hardship.

(d) Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

(e) The following limitations apply to hardship distributions:

(1) A Participant must be an Employee at the time of the hardship distribution.

(f) Hardship distributions may be made from only the following accounts:

(1) Pre-Tax Elective Deferral Account, subject to the limitations described above with respect to hardship distributions of Elective Deferrals

(2) Roth Elective Deferral Account, subject to the limitations described above with respect to hardship distributions of Elective Deferrals

(3) Matching Contribution Account

(4) Nonelective Contribution Account

(5) Rollover Account.

6.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any alternate payee under a qualified domestic relations order. Furthermore, a distribution to an alternate payee shall be permitted if such distribution is authorized by a qualified domestic relations order, even if the affected Participant has not separated from service and has not reached the earliest retirement age. For the purposes of this Section, the terms "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).

6.14 DIRECT ROLLOVER

(a) **Right to direct partial rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have only a portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, the minimum partial rollover must equal at least $500 (applied separately with respect to distributions payable from a Participant's Roth Elective Deferral Account and remainder of the distributable amount).

(b) For purposes of this Section the following definitions shall apply:

(1) An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's Designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution (without regard to the amount to be distributed from the Participant's Roth Elective Deferral Account) reasonably expected to total less than $200 during a year. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). A direct rollover of a distribution from a Roth Elective Deferral Account will only be made to another Roth Elective Deferral Account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent that the rollover is permitted under the rules of 402(c).

(3) A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving spouse and the Employee's or Former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

(4) A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the distributee.

(c) **Participant Notice.** A Participant entitled to an eligible rollover distribution must receive a written explanation of his/her right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same 30-to-90 day timeframe applicable to the Participant consent notice. The direct rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year (without regard to the amount to be distributed from the Participant's Roth Elective Deferral Account) is expected to be less than $200.

6.15 TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's attainment of Normal Retirement Age, death, disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer

earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary employee contributions or to a direct or indirect rollover contribution).

6.16 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under any voluntary compliance program.

ARTICLE VII
TRUSTEE

7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) The Trustee shall have the following categories of responsibilities:

(1) To invest, manage, and control the Plan assets subject, however, to the direction of a Participant with respect to Participant Directed Accounts, the Employer, an Investment Manager or other agent appointed by the Employer;

(2) At the direction of the Administrator, to pay benefits required under the Plan to be paid to Participants, or, in the event of their death, to their Beneficiaries; and

(3) To maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.8.

(b) In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures), the Employer, an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

(1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including, but not limited to, voice recorded) instructions of a Participant (pursuant to the Participant Direction Procedures), the Employer, or any Fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability, resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(3) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such directions improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any directions from the Participant.

(4) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.

(5) Notwithstanding anything hereinabove to the contrary, the Trustee shall not invest any portion of a Participant's Directed Account in collectibles within the meaning of that term as employed in Code Section 408(m).

(c) The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan.

(d) The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.

(e) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

(f) The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

7.2 INVESTMENT POWERS AND DUTIES OF THE TRUSTEE

(a) The Trustee shall invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider,

among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code or the Act so that at all times the Plan may qualify as a qualified plan pursuant to Code Section 401(a). The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) The Trustee may transfer to a common, collective, pooled trust fund or money market fund maintained by any corporate Trustee or affiliate thereof hereunder, all or such part of the Trust Fund as the Trustee may deem advisable, and such part or all of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, pooled trust fund or money market fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The Trustee may transfer any part of the Trust Fund intended for temporary investment of cash balances to a money market fund maintained by any corporate trustee or affiliate thereof. The Trustee may withdraw from such common, collective, pooled trust fund or money market fund all or such part of the Trust Fund as the Trustee may deem advisable.

(c) **Permitted insurance.** At the election of each Participant, the Trustee, at the direction of the Administrator, shall ratably apply for, own, and pay premiums on life insurance Contracts on the lives of the Participants or on the life of any family member or on the joint lives of a Participant and any family member. If a life insurance Contract is to be purchased on behalf of a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than fifty percent (50%) of the aggregate contributions and Forfeitures allocated to the Participant's Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance are purchased with such contributions, then the aggregate premium must be twenty-five percent (25%) or less of the aggregate contributions and Forfeitures allocated to the Participant's Account. If both term insurance and ordinary life insurance are purchased for a Participant, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed twenty-five percent (25%) of the aggregate contributions and Forfeitures allocated to a Participant's Account.

Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply to the portion of a Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. Amounts rolled over into this Plan in accordance with Section 4.12 may be used to purchase Contracts without limitation. Thus, such amounts may be used to purchase life insurance on the Participant or any family member or on the joint lives of a Participant and any family member, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

For purposes of this subsection, a family member shall be any lineal ascendant or descendant of the Participant.

(d) **Contract conversion at retirement.** Upon commencement of benefits, the Trustee must distribute the life insurance Contracts to the Participant or convert the entire value of the life insurance Contracts to cash so that no portion of such value may be used to continue life insurance protection beyond retirement. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

7.3 OTHER POWERS OF THE TRUSTEE

The Trustee, in addition to all powers and authorities under common law, statutory authority, including the Act, and other provisions of the Plan, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:

(a) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;

(b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Trustee will deliver all proxies to said party, who will then have full responsibility for voting those proxies;

(d) To cause any securities or other property to be registered in the name of the Trust, and the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund, or to cause any securities or other property to be registered in the Trustee's own name or in the name of a nominee or in a street name, provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;

(e) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by

pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

(f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;

(g) To accept and retain for such time as the Trustee may deem advisable any securities or other property received or acquired as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;

(h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan (provided such arbitration does not apply to Participants or Beneficiaries), to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;

(j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may also be agent or counsel for the Employer;

(k) To apply for and procure from responsible insurance companies, to be selected by the Administrator, as an investment of the Trust Fund such annuity, or other Contracts (on the life of any Participant, or on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at the direction of the person with the authority to do so, whatever rights and privileges may be granted under such annuity or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;

(l) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon;

(m) To invest in Treasury Bills and other forms of United States government obligations;

(n) To invest in shares of investment companies registered under the Investment Company Act of 1940, including any money market fund advised by or offered through any corporate trustee or affiliate thereof;

(o) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

(p) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;

(q) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and

(r) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.

7.4 POWERS OF THE CUSTODIAN

The Employer may appoint a custodian of the Plan assets. A custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a custodian unless the context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the custodian's liability. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an Investment Manager, a Named Fiduciary or other third party with authority to provide direction to the Custodian. The resignation or removal of the custodian shall be made in accordance with Section 7.10 as though the custodian were a Trustee.

7.5 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Trustee, the responsibilities of each Trustee may be specified by the Employer and accepted in writing by each Trustee. In the event that no such delegation is made by the Employer, the Trustees may allocate the responsibilities among themselves in a written document signed by all Trustees, in which event the Trustees shall notify the Employer and the Administrator in writing of such action and specify the responsibilities of each Trustee. The Administrator thereafter shall accept and rely upon any documents executed by the appropriate Trustee until such time as the Employer or the Trustees file with the Administrator a written revocation of such designation.

7.6 MAJORITY ACTION

Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

7.7 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full-time pay from the Employer shall not receive compensation from the Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

7.8 ANNUAL REPORT OF THE TRUSTEE

(a) **Annual report.** Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

(1) the net income, or loss, of the Trust Fund;

(2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;

(3) the increase, or decrease, in the value of the Trust Fund;

(4) all payments and distributions made from the Trust Fund; and

(5) such further information as the Trustee and/or Administrator deems appropriate.

(b) **Employer approval of report.** The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

7.9 AUDIT

(a) **Duty to engage accountant.** If an audit of the Plan's records shall be required by the Act and the regulations thereunder for any Plan Year, the Administrator shall engage on behalf of all Participants an independent qualified public accountant for that purpose. Such accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Administrator and the Trustee a report of the audit setting forth the accountant's opinion as to whether any statements, schedules or lists that are required by Act Section 103 or the Secretary of Labor to be filed with the Plan's annual report, are presented fairly in conformity with generally accepted accounting principles applied consistently.

(b) **Payment of fees.** All auditing and accounting fees shall be an expense of and may, at the election of the Employer, be paid from the Trust Fund.

(c) **Information to be provided to Administrator.** If some or all of the information necessary to enable the Administrator to comply with Act Section 103 is maintained by a bank, insurance company, or similar institution, regulated, supervised, and subject to periodic examination by a state or federal agency, then it shall transmit and certify the accuracy of that information to the Administrator as provided in Act Section 103(b) within one hundred twenty (120) days after the end of the Plan Year or such other date as may be prescribed under regulations of the Secretary of Labor.

7.10 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) **Trustee resignation.** Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.

(b) **Trustee removal.** Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

(c) **Appointment of successor.** Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, the remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) **Appointment of successor prior to removal of predecessor.** The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) **Trustee's statement upon cessation of being Trustee.** Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.8 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.8 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.8 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.8 and this subparagraph.

7.11 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the Vested interest, if any, of a Participant to another trust forming part of a pension, profit sharing or stock bonus plan maintained by such Participant's new employer and represented by said employer in writing as meeting the requirements of Code Section 401(a), provided that the trust to which such transfers are made permits the transfer to be made.

7.12 TRUSTEE INDEMNIFICATION

The Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's power and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

ARTICLE VIII
AMENDMENT, TERMINATION, MERGERS AND LOANS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan, subject to the limitations of this Section. However, any amendment which affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

(b) **Permissible amendments without affecting reliance.** The Employer may make the modifications described below without affecting reliance on the terms of the Plan. An Employer that amends the Plan for any other reason may not rely on the advisory letter that the terms of the Plan meet the qualification requirements of the Code. Permitted changes include: adding options permitted by the Plan; adding or deleting provisions that are optional under the volume submitter specimen plan; changing effective dates within the parameters of the volume submitter specimen plan; correcting obvious and unambiguous typographical errors; correcting cross-references that do not in any way change the original intended meaning of the provisions; adding a list of benefits that must be preserved as protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder; amending provisions dealing with the administration of the Trust; a change to the name of the Plan, Employer, Trustee, custodian, Plan Administrator or any other fiduciary, the Plan Year; and any sample or model amendment published by the IRS (or other required good-faith amendments) which specifically provide that their adoption will not cause the plan to be treated as an individually designed plan.

(c) **Sponsoring practitioner amendments.** The Employer (and every Participating Employer) expressly delegates authority to the sponsoring organization of this Volume Submitter Plan the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this Volume Submitter Plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the Volume Submitter Plan as amended qualifies under Code Section 401(a) (unless a ruling or determination is not required by the IRS). However, the volume submitter practitioner shall cease to have the authority to amend on behalf of an Employer that adopts an impermissible plan type or impermissible plan provision (as described in IRS Announcement 2005-37 and any subsequent guidance). The volume submitter practitioner will maintain a record of the Employers that have adopted the Plan, and the practitioner will make reasonable and diligent efforts to ensure that adopting Employers adopt new documents when necessary. This subsection supersedes other provisions of the Plan to the extent those other provisions are inconsistent with this subsection.

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates, or causes any reduction in the amount credited to the account of any Participant, or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(e) **Anti-cutback restrictions.** Except as permitted by Regulations (including Regulation 1.411(d)-4) or other IRS guidance, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any Section 411(d)(6) protected benefit or adds or modifies conditions relating to Section 411(d)(6) protected benefits which results in a further restriction on such benefits unless such "Section 411(d)(6) protected benefits" are preserved with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. The term "Section 411(d)(6) protected benefits" means benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. An amendment which has the effect of decreasing a Participant's Account balance with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. The

preceding shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested as provided in Section 6.4 and shall not thereafter be subject to forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Plan to Participants in a manner which is consistent with the provisions of Section 6.5 except that no Participant or spousal consent is required. Distributions to a Participant shall be made in cash or through the purchase of irrevocable nontransferable deferred commitments from an insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of Section 411(d)(6) protected benefits in accordance with Section 8.1(e).

(c) **Abandoned plan.** If the Employer, in accordance with DOL guidance, abandons the Plan, then the Trustee (or Insurer) or other party permitted to take action as a qualified terminal administrator (QTA), may terminate the Plan in accordance with applicable Department of Labor and IRS regulations and other guidance.

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan and trust, only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation, and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any Section 411(d)(6) protected benefits in accordance with Section 8.1(e).

8.4 LOANS TO PARTICIPANTS

(a) **Permitted loans.** The Trustee (or the Administrator if the Trustee is a nondiscretionary Trustee or if loans are treated as Participant directed investments pursuant to this Plan) may, in the Trustee's (or, if applicable, the Administrator's) sole discretion, make Plan loans to Participants or Beneficiaries under the following circumstances: (1) loans shall be made available to Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount that is made available to other Participants and Beneficiaries; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Plan loan shall exceed a Participant's Vested interest in the Plan.

(b) **Prohibited assignment or pledge.** An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a Plan loan under this Section.

(c) **Loan program.** The Administrator shall be authorized to establish a Participant Loan Program to provide for loans under the Plan. The Participant Loan Program shall be established in accordance with Department of Labor regulation Section 2550.408(b)-1(d)(2) providing for loans by the Plan to parties-in-interest under this Plan, such as Participants or Beneficiaries. In order for the Administrator to implement such Participant Loan Program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

(1) the identity of the person or positions authorized to administer the Participant loan program;

(2) a procedure for applying for loans;

(3) the basis on which loans will be approved or denied;

(4) limitations, if any, on the types and amounts of loans offered;

(5) the procedure under the program for determining a reasonable rate of interest;

(6) the types of collateral which may secure a Participant loan; and

(7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

Such Participant Loan Program shall be contained in a separate written document which, when properly executed, is hereby incorporated by reference and made a part of the Plan. Furthermore, such Participant Loan Program may be modified or amended in writing from time to time without the necessity of amending this Plan.

(d) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a Plan loan made pursuant to this Section and such loan is secured by the Participant's interest in the Plan, then, to the extent provided in the

Participant loan program, a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

ARTICLE IX
TOP-HEAVY

9.1 TOP-HEAVY PLAN REQUIREMENTS

(a) **Top-Heavy requirements.** For any Top-Heavy Plan Year, the Plan shall provide the special vesting requirements of Code Section 416(b) pursuant to Section 6.4 of the Plan and the minimum required allocation of Code Section 416(c) pursuant to Section 4.4 of the Plan.

9.2 DETERMINATION OF TOP-HEAVY STATUS

(a) **Definition of Top-Heavy Plan.** This Plan shall be a Top-Heavy Plan if any of the following conditions exists:

(1) if the "top-heavy ratio" for this Plan exceeds sixty percent (60%) and this Plan is not part of any "required aggregation group" or "permissive aggregation group";

(2) if this Plan is a part of a "required aggregation group" but not part of a "permissive aggregation group" and the "top-heavy ratio" for the group of plans exceeds sixty percent (60%); or

(3) if this Plan is a part of a "required aggregation group" and part of a "permissive aggregation group" and the "top-heavy ratio" for the "permissive aggregation group" exceeds sixty percent (60%).

(b) **Top-heavy ratio.** "Top-heavy ratio" means, with respect to a "determination date":

(1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan (as defined in Code Section 408(k)) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the "determination date" has or has had accrued benefits, the top-heavy ratio for this plan alone or for the "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the "determination date" (including any part of any account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), both computed in accordance with Code Section 416 and the Regulations thereunder.

Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the "determination date," but which is required to be taken into account on that date under Code Section 416 and the Regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the "determination date" has or has had any accrued benefits, the top-heavy ratio for any "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the "determination date," and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all participants, determined in accordance with (1) above, and the present value of accrued benefits under the defined benefit plan or plans for all participants as of the "determination date," all determined in accordance with Code Section 416 and the Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the "determination date" (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002).

(3) For purposes of (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent "valuation date" that falls within or ends with the 12-month period ending on the "determination date," except as provided in Code Section 416 and the Regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the plan at any time during the 1-year period (5-year period in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002) ending on the "determination date" will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the Regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the "determination dates" that fall within the same calendar year.

The accrued benefit of a participant other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

(4) The calculation of top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account, will be made in accordance with Code Section 416 and the regulations thereunder.

(c) **Determination date.** "Determination date" means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" means the last day of that Plan Year.

(d) **Permissive aggregation group.** "Permissive aggregation group" means the "required aggregation group" of plans plus any other plan or plans of the Employer or any Affiliated Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(e) **Required aggregation group.** "Required aggregation group" means: (1) each qualified plan of the Employer or any Affiliated Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer or any Affiliated Employer which enables a plan described in (l) to meet the requirements of Code Sections 401(a)(4) or 410.

(f) **Valuation Date.** "Valuation date" means the date elected by the Employer as of which account balances or accrued benefits are valued for purposes of calculating the "top-heavy ratio."

ARTICLE X
MISCELLANEOUS

10.1 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

10.2 ALIENATION OF BENEFITS

(a) **General rule.** Subject to the exceptions provided below, and as otherwise permitted by the Code and the Act, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized, except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan, by reason of a loan made pursuant to Section 8.4. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Vested Participant's Account, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.8 and 2.9.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a qualified domestic relations order defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a qualified domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) **Exception for certain debts to Plan.** Subsection (a) shall not apply to an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into in accordance with Code Sections 401(a)(13)(C) and (D).

10.3 CONSTRUCTION AND INTERPRETATION OF PLAN

(a) **Applicable state laws.** This Plan and Trust shall be construed and enforced according to the Code, the Act and the laws of the State of New York, other than its laws respecting choice of law, to the extent not pre-empted by Federal law.

(b) **Single subsections.** This Plan and Trust may contain single subsections. The existence of such single subsections shall not constitute scrivener's errors.

(c) **Separate Accounts.** Unless otherwise specified by a particular provision, the term "separate account" does not require a separate fund, only a notational entry in a recordkeeping system.

10.4 GENDER AND NUMBER

(a) **Masculine and feminine.** Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply.

(b) **Singular and plural.** Whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

10.5 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

10.6 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make an excessive contribution under a mistake of fact pursuant to Act Section 403(c)(2)(A), the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

(c) **Contribution conditioned on deductibility.** Except as otherwise provided by a particular Plan provision, any contribution made by the Employer to the Plan is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following the final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a competent jurisdiction, demand repayment of such disallowed contribution and the Trustee shall return such contribution within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

10.7 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

10.8 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

10.9 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer.

10.10 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

10.11 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The named Fiduciaries of this Plan are (1) the Employer, (2) the Administrator, (3) the Trustee and (4) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1; and shall have the authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's funding policy and method; and to amend or terminate, in whole or in part, the Plan. The Administrator shall have

the sole responsibility for the administration of the Plan, including, but not limited to, the items specified in Article II of the Plan, as the same may be allocated or delegated thereunder. The Administrator shall act as the named Fiduciary responsible for communicating with the Participant according to the Participant Direction Procedures. The Trustee shall have the sole responsibility of management of the assets held under the Trust, except to the extent directed pursuant to Article II or with respect to those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated herein. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

10.12 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

10.13 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan by the Employer, less expenses paid, shall be returned within one (1) year after the date the initial qualification is denied, and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended.

10.14 ELECTRONIC MEDIA

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to an immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants, making (and changing) deferral elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

10.15 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach under the Act. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate Fiduciary or Plan official in undertaking correction of a fiduciary breach, including correction under the DOL Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC. For example, to correct an operational error, the Administrator may require the Trustee to distribute Elective Deferrals or Vested Matching Contributions, including earnings, from the Plan where such amounts result from an operational error other than a failure of Code Section 415, Code Section 402(g), or a failure of the ADP Test or the ACP Test.

10.16 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

ARTICLE XI
PARTICIPATING EMPLOYERS

11.1 ADOPTION BY OTHER EMPLOYERS

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee, any other corporation or entity, whether an Affiliated Employer or not, may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

11.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) **Same Trustee for all.** Each such Participating Employer shall be required to use the same Trustee as provided in this Plan.

(b) **Holding and investing assets.** The Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof.

(c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

11.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a party to this Plan; provided, however, that with respect to all of its relations with the Trustee and Administrator for the purpose of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

11.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

11.5 PARTICIPATING EMPLOYER CONTRIBUTION AND FORFEITURES

Any contribution or Forfeiture subject to allocation during each Plan Year shall be allocated only among those Participants of the Employer or Participating Employers making the contribution or by which the forfeiting Participant was employed. However, if the contribution is made, or the forfeiting Participant was employed, by an Affiliated Employer, such contribution or Forfeiture shall be allocated among all Participants of all Participating Employers who are Affiliated Employers in accordance with the provisions of this Plan. On the basis of the information furnished by the Administrator, the Trustee shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Participating Employer shall immediately notify the Trustee thereof.

11.6 AMENDMENT

Any Participating Employer that is an Affiliated Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer, then amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee where such consent is necessary in accordance with the terms of this Plan.

11.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Employer shall have the right to discontinue or revoke the participation in the Plan of any Participating Employer by providing 45 days notice to such Participating Employer. The Trustee shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new Trustee as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any Section 411(d)(6) protected benefits as described in Section 8.1(e). If a separate plan has not been established, at the time of such continuance or revocation for whatever reason, the assets and liabilities, Contracts and other Trust Fund assets allocable to such Participating Employer's participation in this Plan shall be spun off pursuant to Code Section 414(l) and such spun off assets shall constitute a retirement plan of the Participating Employer with such Participating Employer becoming sponsor and the individual who has signed the Supplemental Participation Agreement on behalf of the Participating Employer becoming Trustee for this purpose. Such individual shall agree to this appointment by virtue of signing the Supplemental Participation Agreement. If such individual is no longer an Employee of the Participating Employer, then the Participating Employer shall appoint a Trustee. If no successor is designated, the Trustee shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of such Participating Employer.

11.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

11.9 PROVISIONS APPLIED SEPARATELY (OR JOINTLY) FOR PARTICIPATING NON-AFFILIATED EMPLOYERS

(a) **Separate status.** The Plan Administrator will apply the definition of Compensation and perform the tests listed in this Section, separately for each Participating Employer other than an Affiliated Employer of such Participating Employer. For this purpose, the Employees of each Participating Employer (and its Affiliated Employers), and their allocations and accounts, shall be treated as though they were in separate plan. Any correction action, such as additional contributions or corrective distributions, shall only affect the Employees of the Participating Employer (and its Affiliated Employers, if any). The tests subject to this separate treatment are:

(1) The ADP Test.

(2) The ACP Test.

(3) Nondiscrimination testing as described in Code Section 401(a)(4) and the applicable Regulations.

(4) Coverage testing as described in Code Section 410(b) and the Regulations.

(5) Status as a Highly Compensated Employee under Section 1.39.

(b) **Joint status.** The following tests shall be performed for the plan as whole, without regard to employment by a particular Participating Employer:

(1) Applying the annual addition limitation in Section 4.9, including the related Compensation definition.

(2) Applying the Code Section 402(g) limitation in Section 4.2.

(3) Applying the limit on Catch-Up Contributions in Section 4.2.

11.10 TOP-HEAVY APPLIED SEPARATELY FOR PARTICIPATING NON-AFFILIATED EMPLOYERS

The Plan will apply the Top-Heavy Plan provisions separately to each Participating Employer other than an Affiliated Employer of such Participating Employer. The Plan will be considered separate plans for each Participating Employer and its Employees for purposes of determining whether such a separate plan is top-heavy under Section 9.1 or is entitled to the exemption described in such Section. For purposes of applying this Article to a Participating Employer, the Participating Employer and any entity which is an Affiliated Employer to that Participating Employer shall be the "Employer" for purposes of Section 9.1, and the terms "Key Employee" and "Non-Key Employee" shall refer only to the Employees of that Participating Employer and/or its Affiliated Employers. If such a Participating Employer's separate plan is top-heavy, then:

(a) Highest contribution rate. The Plan Administrator shall determine the highest Key Employee contribution rate under Section 4.4(h) by reference to the Key Employees and their allocations in the separate plan of that Participating Employer;

(b) Top-Heavy minimum allocation. The Plan Administrator shall determine the amount of any required top-heavy minimum allocation separately for that separate plan under Section 4.4(h); and

(c) Plan which will satisfy. The Participating Employer shall make any additional contributions Section 4.4(h) requires.

11.11 HIGHLY COMPENSATED EMPLOYEE STATUS

Status as a Highly Compensated Employee under Section 1.39 shall be determined separately with respect to each Participating Employer (and all its Affiliated Employers).

11.12 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers and their Affiliated Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service and has not had a severance from employment.

11.13 REQUIRED MINIMUM DISTRIBUTIONS

If a Participant is a 5-percent owner (under Section 6.8(e)(6)) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's required beginning date under Section 6.8 shall be the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2.

IN WITNESS WHEREOF, this Plan has been executed the day and year first above written.

Signed and delivered
in the presence of:

CIFC Asset Management LLC

WITNESS

EMPLOYER

Stephen Vaccaro

WITNESS

TRUSTEE

Rahul Agarwal

WITNESS

TRUSTEE

Robert Milton

WITNESS

TRUSTEE

SUNGARD VOLUME SUBMITTER MODIFICATIONS

CIFC 401(k) Savings Plan

The enclosed Plan is being submitted for expedited review as a Volume Submitter Plan.

No modifications from the approved specimen plan have been made to this Plan.

Exhibit 5c

EXHIBIT 5c
(Proposed Resolutions re 401(k) Plan)

WHEREAS, CIFC Asset Management LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company ("CIFCAM"), has established the 401(k) Savings Plan and Trust effective January 1, 2014 (the "Plan").

NOW THEREFORE BE IT

RESOLVED, that the Board hereby approves the Plan; and be it further

RESOLVED, that the officers of the Company be, and each of them hereby is, authorized in the name of and on behalf of the Company to make all such arrangements, to take all such further action, to cause to be prepared and filed all such documents, to make all expenditures and incur all expenses and to execute and deliver all instruments and documents, including officers' certificates, as they may deem necessary or appropriate in order to fully effectuate the purposes of the foregoing resolution, and the execution by any such officer of any such document or instrument or the payment of any such expenditures or expenses or the performance by any officer of any act in connection with the foregoing matters shall conclusively establish his or her authority therefor from the Company and the approval and ratification by the Company of the documents or instruments so executed, the expenses or expenditures so paid and the action so taken; and be it further

RESOLVED, that any and all actions heretofore taken by any officer of the Company (and/or any subsidiary of the Company) in connection with the matters contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

Exhibit 6

Intentionally Omitted

Exhibit 7

EXHIBIT 7
(Proposed Resolutions re Termination of GE Shareholder Agreement)

WHEREAS, the Company and GE Capital Equity Investments, Inc., a Delaware corporation (the "Investor"), previously entered into (i) an Investment Agreement, dated as of September 24, 2012 (the "Investment Agreement"), by and between the Company and the Investor, and (ii) a letter agreement, dated as of September 24, 2012, by and among the Investor, CIFC Parent Holdings LLC, a Delaware limited liability company, and DFR Holdings, LLC, a Delaware limited liability company ("DFR Holdings") (the "Side Letter" and, together with the Investment Agreement, the "GE Agreement;" capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Investment Agreement).

WHEREAS, Section 5.1(a)(ii) of the Investment Agreement provides that the Investment Agreement may be terminated by the Company with fifteen (15) days' prior written notice to the Investor (the "Termination Notice") upon such time as the Total Investor Shares held by the Investor represents less than five percent (5%) of the sum of the Voting Shares and the Warrant Shares issuable to the Investor upon exercise of the Investor Warrant (the "Threshold Percentage").

WHEREAS, The Investor previously sold all of the Total Investor Shares held by the Investor to DFR Holdings (the "GE Sale"), such that the Total Investor Shares held by the Investor now represents less than the Threshold Percentage.

NOW THEREFORE BE IT

RESOLVED, that the officers of the Company be, and each of them acting singly hereby is, authorized to take such action as is necessary to terminate the GE Agreement if and when any such officer determines that such termination is in the best interests of the Company, and to provide any required notices to effect such termination, at such time as the officers, or any of them acting singly, shall determine.

RESOLVED, that the officers be, and each of them acting singly hereby is, authorized and empowered, for and on behalf of the Company, to execute and deliver any and all other documents, papers or instruments and to do or cause to be done any and all such acts and things as they, or any of them may deem necessary, appropriate or desirable in order to enable the Company fully and promptly to carry out the purposes and intents of the foregoing resolution.